IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 451 of 1993
WITH
CIVIL APPLICATION NO. 2490 OF 1993
WITH
CIVIL APPLICATION NO. 644 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

INDIAN INSTITUTE OF MANAGEMENT
Versus
UKAKANT SHRIVASTVA

Appearance:
MR KS NANAVATI, Senior Advocate with Mr. Nandish Chudgar advocate for Appellants
MR AD SHAH for MR M.R ANAND for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 2 (Absent)

CORAM : MR.JUSTICE B.C.PATEL
and

MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 16/03/2001 & 20/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. This appeal is directed against the judgment and order delivered by the learned Single Judge of this Court in Special Civil Application NO. 77/93 on 29.9.93.

#. Respondent No.1 herein, the original petitioner, filed the aforesaid petition under Art. 226 of the Constitution of India against the order of termination of his services. The respondent No.1 was Professor in the Indian Institute of Management, Ahmedabad (hereinafter to be referred to as "the Institute and/or IIMA"). By the letter dated 5.1.93 vide Annexure : A to the petition, his services were terminated. The appellant Institute was of the view that it is not in the interest of the Institute to continue the respondent No.1 in services and therefore, his services were terminated with immediate effect. Along with the letter, a sum of Rs. 30,660/towards three months' salary by banker's pay order was forwarded giving particulars. The respondent No.1 was requested to settle the accounts with Finance & Accounts office in the course of time. The respondent No.1 was requested to surrender the library books and other articles belonging to the Institute. The respondent No.1 was requested to give vacant possession of the respondent No.1 's faculty house no. 304 to the Housekeeping Officer on or before 31st January, 1993.

#. The Indian Institute of Management is a society registered under the Societies Registration Act, 1860 and is also registered under the Bombay Public Trust Act. There is Board of Governors looking after the property and affairs of the Institute. It is contended that the Institute was established in the year 1962 by the Government of India and Government of Gujarat. It is contended in the petition that the Indian Industry also participated in the establishment of the Institute. Such Institutes are also at Calcutta and Bangalore.

#. It is contended by the respondent No.1 that the Government of India bears the main financial burden through consolidated funds of the Government of India and ultimate control of the Institute is with the Government of India. According to the respondent No.1, in view of the Memorandum of Association, the rules and the affidavit-in-reply in Special Civil Application No. 889/80 filed by one A.K. Rajan, it is clear that there

is complete control of the Institute by the Government of India. The respondent No.1, relying upon the decision of the Apex Court in the case of RAMANNA D SHETTY VS. INTERNATIONAL AIRPORT AUTHORITY [AIR 1979 SC 1638] contended that the Institute is an instrumentality of the State under Art. 12 of the Constitution and therefore is amenable to writ jurisdiction of this Court under Art. 226 of the Constitution.

#. It is further contended that the Institute is engaged in imparting education which is one of the public functions of the Institute in the field of management, education, training and research which is vitally essential for the rapid economical and social development of the country. Therefore also it must be deemed to be a State under Art. 12 of the Constitution of India.

#. A student of the Institute addressed a letter to the Coordinator, Student Activity Centre on 29th June, 1992 and forwarded a copy of the same to the Director, I.I.M., Chairman, Research & Publications, Professors of PGP Executive Committee, CMA Chairman & P & QM Area Chairman. The student, in the aforesaid letter raised a grievance that the standards of morality is applied only for students found copying in the examinations, quizzes and assignments, and not for the Professors. It is pointed out in the letter as under. (relevant portion is reproduced):

> "While doing my summer project, I had to do some modelling and data analysis. I had carried my copies of Levin (Statistics for Management), and Baumol (Economic Theory and Operations Analysis) along. From the organisation I was in, I borrowed copies of Wagner (Principles of Operations Research) and Quantitative Techniques for Managerial Decisions by U.K. Srivastava (a CMA Prof. at IIMA), G.V. Shenoy & S.C Sharma. As I was browsing through the books, I came across a most interesting thing.
>
> At several places, the Srivastava, Shenoy, Sharma book had simply lifted stuff from the other three books (Baumol, Levin and Wagner) and no references anywhere in the book. That Baumol, Levin and Wagner had not possibly done it the other day is fairly clear (since the Wagner I had was a 1974 edition). So now what are we going to do about it? Shouldn't SAC ask the

Director for some action? Or is it that in future our cogging will be viewed a little more leniently? SAC should find out the standards of cogging are different for profits.

I am enclosing two bunches of xerox copies. Bunch A is the appropriate matter from the three books of Levin, Baumol and Wagner. Bunch B is the cogged version of Srivastava, Shenoy and Sharma. Corresponding numbers on the left side in both the bunches show the matching matter. For example, para (1) on Bunch B is lifted from para (1) of Bunch A, para (2) of B from para (2) of A etc. Also, the matching matter found from the result of a single evening's finding by chance. Any systematic search is bound to unearth more of the same phenomenon."

In view of this letter, the Institute was required to examine the matter. After going through the letter and the material annexed with the letter, there was prima facie satisfaction about the evidence of copying and hence an inquiry was set up against the respondent No.1 herein. With a view to clear the petitioner's name, formal probe by a committee consisting of professors was set up on 9.6.92 in consultation with the respondent No.1. The committee consisted of professor Anil Bhatt (Chairman), Professor Bakul Dholakia, Professor Girija Sharan and Professor Srinivas Rao, all Senior Professors of the Institute and were working with the respondent No.1 in the Institute. Professor Bhatt was at the relevant time Member of Faculty of Development & Evaluation Committee which is one of the Apex Committees of the Institute. He rendered services as Chairman of Public System's Group. Professor Dholakia was at the relevant time Professor of Industrial Economics and served earlier as Chairman, Economics Area of I.I.M.A. He was with the Reserve Bank of India also. Professor Girija Sharan was at the relevant time Chairman, Centre for Management in Agriculture, while Professor Srinivas Rao was Manager, Publications at the Institute and was lateron Chairman, Business Policy Area of the I.I.M.A. These persons were familiar with the authorship and copyright conventions. Professors Dholakia & Girija Sharan were familiar with the importance of the topics discussed in the book written by the respondent No.1.

#. The respondent No.1 volunteered and submitted

materials. The book in question, its later version and review of the books etc. were before the Committee. A letter dated 6.7.92 and its enclosure were placed before the Committee and the Committee as aforesaid was asked to determine whether there was evidence of plagiarism in the book co-authored by the respondent No.1 or not. The Committee met the respondent No.1 and heard him. Thereafter report was submitted to the Director on 17.8.92. The members of the Committee arrived at a unanimous conclusion that "the identicalness of several portions of SSS spread over several chapters constitutes plagiarism". The Committee found copying without acknowledgment of the source atleast at 10 different places including 5 foreign books and some other Indian books (all books were published prior to the publication of the book by the respondent No.1). Identical material prepared at the I.I.M.A. was used. Report is annexed with the affidavit-in-reply.

#. It is pointed out by the appellant that the report was given to the respondent No.1 and he was requested to offer his comments, if any, to which respondent No.1 replied by his letter dated 11.9.1992 contending inter alia that the responsibility of writing different group of chapters was assigned to different co-authors and therefore, he has not written all chapters but has written only certain chapters. He further contended that the Committee had not found any evidence of plagiarism, barring inclusion of some anonymous and unregistered materials in one chapter. Copy of the comments offered by the respondent No.1 are also placed on the record. The Committee after going through the explanation of the respondent No.1 arrived at a conclusion that the respondent No.1 's explanation is not acceptable and more particularly he failed to identify which chapters were written by which of the three co-authors also because information on the allocation of responsibility for chapters was not available in the book and also because the respondent No.1 did not supply information in his letter dated 6.7.92 to the Director. Even the Committee which met the respondent No.1 on 11.8.92 was not conveyed this information. It appears that subsequently the respondent No.1 came out with an after-thought version about the responsibility of other co-authors.

#. The Committee after considering the comments of the respondent No.1 submitted the report dated 28th September, 1992 which is also produced on the record. This report was forwarded to the respondent No.1 , who in turn offered his comments vide his letters dated 14.10.92 and 16.10.92. The Chairman of the Committee after

examining the aforesaid material by his letter dated 30th October, 1992 informed that no further comments or further report is required. Copy of this letter was also forwarded to the respondent No.1. It appears that it is this Committee which found that there was substantial evidence in the allegation of plagiarism. The Institute which is of an international repute felt that it would not be in the interest of the Institute to continue the respondent No.1 in services anymore, hence, with a view to give further opportunity, further hearing was given by the Director in the months of November and December, 1992.

##. It appears that the Institute indicated to the respondent No.1 during the discussion that the respondent No.1 (i) may voluntarily resign from the services of the Institute or (ii) should express regret, apology and accept deterrent penalty or (iii) should accept the termination of contractual relationship with I.I.M.A. There was discussion with the Dean also. It is the case of the Institute that the respondent No.1 initially opted for expressing regret, apology and acceptance of deterrent penalty. During the discussion, the respondent No.1 orally accepted the responsibility for the book and his role as Senior Co-author. It is stated by the Institute through Mr. N.V. Pillai, Establishment Officer that after expressing willingness to offer an apology, a draft letter of apology was also signed with some changes, which was shown to the Director and the Dean. Not only that but in the affidavit, it is pointed out that the respondent No.1 agreed to pay a lumpsum of Rs.75,000/- in lieu of demotion, freeze on increments, suspension of consultancy privileges etc. and thereupon the Director agreed to the suggestion of respondent No.1 that whole or part of the sum of Rs. 75,000/- as suggested by the respondent No.1 himself be paid by him or a relative or someone and the word `penalty' need not be mentioned in the letter that would be exchanged between the respondent No.1 and the Director. It is further pointed out that lateron, respondent No.1 haggled about the quantum of penalty and tried to bring it down to Rs. 50,000/- and that too by instalment. In December, 1992, he agreed to write a letter of apology and took the responsibility for plagiarism but lateron he backed out.

##. It is pointed out in the affidavit that in view of this attitude, the Director called a meeting of several senior colleagues of the faculty and Board of Governors to review the situation and after discussing the matter at length and the options discussed with the respondent

No.1 as well other options, a consensus was arrived at to the effect of immediate termination of services of the respondent No.1, not by way of punishment, was the best course of action. In this background it is submitted by the Institute that the letter dated 5.1.93 came to be issued and served upon the respondent No.1. It is this letter which was challenged before the learned Single Judge who considered various submissions and arrived at a conclusion that the order of termination is bad in law as it is in the nature of penalty and passed against the principles of natural justice as also it is passed in violation of Section 51 of the Gujarat University Act. The learned Single Judge quashed and set aside the order dated 5.1.93 vide Annexure 'A' to the petition with a further direction to the Institute to reinstate the respondent No.1 herein with all consequential benefits. It is against this order passed by the learned Single Judge, the present appeal is preferred by the Institute raising several contentions.

##. Division Bench of this Court (Coram: B.N.Kirpal, C.J. as His Lordship then was & R.K.Abichandani, J.) at the stage of admission of this L.P.A., made certain orders and the said orders are required to be reproduced at this juncture. The said orders are dated 22nd July, 1994 and dated 25th July, 1994. The same read as under.

Order dated 22nd July, 1994 :-

During the course of arguments on 21st of July, 1994, the counsel for the respondent herein was asked to produce in Court the original of the letter dated 1st of February, 1980., xerox copy of which was filed, along with the affidavit-in-sur-rejoinder, at page 248 of the record. That letter was produced in Court as the Court wanted to satisfy itself about the genuineness of the same.

Today, Mr.K.S. Nanavati has drawn our attention to the telephone directory of the year 1986 for Delhi, which shows that M/s. Wiley Eastern Limited, Publishers, whose address in the Telephone Directory is : " 4835/24, Ansari Road", was having telephone number 261487. In the original letter, which has now been filed, as well as the xerox copy, which is at page 248, instead of telephone no. 261487, the telephone number given is `3261487', along with two other telephone numbers "3276802 and 3278348". The

original letter of 1st February, 1980, as well as another letter of 26th March, 1982 which has been produced has only one fold in the middle. The said letters are directed to be kept in safe custody of the Registrar of this Court and the said letters are marked `A' and `B' for identification. Shri K.S. Nanavati requests for a short adjournment to enable him to move an application for taking appropriate action with regard to the aforesaid letters, which have been filed. At his request, adjourned to Monday, 25th July, 1994."

Order dated 25th July, 1994 :-

"On 21st July, 1994, the respondent herein placed on record two letters dated 1st February, 1980 and 26th March, 1982, stated to have been written by M/s. Wiley Eastern Limited, Publishers, Delhi. The xerox copies of these had already been filed at the time of the hearing of the Special Civil Application before the Single Judge.

In this Court's order dated 22nd of July, 1994, facts are stated, which prima facie show that the letters, which were filed, were not genuine letters and had been filed with a view to procuring a favourable order from this Court. Perhaps, the dictum laid down by the Supreme Court in Naraindas v. Government of Madhya Pradesh & Ors., AIR 1974 SC 1252, at page 1256, to the effect that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtaining a favourable order, then it would prejudice or interfere with the due course of the judicial proceeding and thus, amount to contempt of court.

In view of the aforesaid, we issue notice to the respondent to show cause as to why action should not be taken against him for contempt of this Court. Mr. P.V. Nanavati, counsel for the respondent, accepts notice on behalf of the respondent. He wants two weeks' time to file an affidavit. Adjourned to 9th August, 1994."

##. Prof. G. Sharan, one of the members of the Committee, addressed a letter on January 5, 1993 to the Director, interalia pointing out the brief conversation

the respondent No.1 herein had some time after he gave his first response to the report of the Committee set up to examine the matter. In brief Prof. G. Sharan pointed out that he was asked by the respondent No.1 to rethink about the conclusions which the committee had arrived at. The respondent No.1 further conveyed that he is a member of the Centre for Management and Agriculture and in view of the long association he had with Prof. G. Sharan, he was expecting Prof. G. Sharan to do something for him. Shri Sharan, said to the respondent No.1 that the report has already been given to the Director and that he was feeling uncomfortable to talk about the subject. Mr. Nanavati, learned counsel appearing for the IIMA submitted that thus the respondent No.1 was trying to approach the member of the Committee to do a favour to him.

##. Learned counsel Mr. Nanavati drew our attention to a letter addressed by Prof. Bakul Dholakia wherein the author of the letter Prof. Dholakia, another member of the Committee, pointed out an attempt made by the respondent No.1 in connection with the report submitted by the Committee. The respondent No.1 conveyed that he had gone through the committee's report and asked Shri Dholakia whether he could help him by writing a note of dissent. Shri Dholakia in his letter has pointed out that he conveyed the respondent No.1 that the Committee's opinion on the matter was unanimous, and in the light of existing evidence, there was no room whatsoever for any dissent.

##. Thus, Mr. Nanavati, learned counsel for the appellant submitted that the respondent No.1 approached two members of the Committee to secure favour for him; Those members of the Committee have placed in writing about the said conduct of the respondent No.1.

##. It is required to be noted at this stage that the 1st edition of the book titled "Qualitative Techniques in Managerial Decision Making" was published by M/s. Wiley Eastern Limited, New Delhi in the year 1983. From the preface of the book as well as from the endorsement of copyright, it is clear that the 1st edition of this book, having 23 Chapters, was published in 1983. So far as the second edition of the book is concerned, it was published after June, 1989. It is clear from the second edition that it was published by the same publisher who published the 1st edition. However, in the subsequent edition of the book, there are only 22 chapters. This is not only a relevant but also an important aspect to be kept in mind.

##. Mr. Nanavati, learned counsel submitted that the Court ought to have dismissed the petition of the respondent No.1 herein as he practiced fraud with the Court. We have earlier reproduced the orders passed by the Division Bench in this matter on two occasions. Mr. Nanavati submitted that the respondent No.1 produced before the Court two letters written by one Mr.A. Machwe of M/s. Wiley Eastern Limited, New Delhi purported to have been written on 1st February 1980 and 26th March 1982. Mr. Nanavati submitted that the letters were produced with a view to show that the respondent No.1 had nothing to do with plagiarism for which the committee recorded a finding. In the letter dated 1st February 1980, addressed to the respondent No.1 herein, the Publisher had tried to suggest its desire to confirm the arrangement which the respondent No.1 proposed for sharing the responsibility of writing the book. So far as the respondent No.1 is concerned, in view of this letter, he was responsible for writing Part I (Statistics), Chapters 1, 3, 4, 5, 10, 13, Part (OR) II Chapter 17 and Chapter 19. From this letter, the respondent No.1 suggested that in all, three persons, including two other co-authors, were responsible. However, only 22 Chapters were suggested to be in that book. It is also suggested by the Publisher that on 1st February 1980, the publisher suggested that the respondent No.1 and his colleagues were asked to proceed with the writing of the book.

##. By the second letter dated 26th March 1982, the Publisher, M/s. Wiley Eastern Limited, has conveyed about the final clearance from NBT for support of the book. The Publisher made a request in this letter to revise Chapters 1, 3, 4, 5, 10, 13, 17 and 19 in the light of the comments from the NBT reviewers.

##. Mr. Nanavati, learned counsel submitted that in view of the fact that there is reference to only 22 Chapters in the letter dated 1.2.1980, it must have been written after the publication of the second edition, as it is the second edition which has 22 chapters and not the first edition. The first edition had 23 chapters. He submitted that contents of this letter clearly indicate that respondent No.1 had managed to get a letter with a view to show that he was not responsible for all chapters of the book as the publisher specifically asked the writers to write particular chapters. However, the publisher forgot that in the first edition which was published in 1983 there were 23 chapters, and the second edition which was published in 1989 had only 22 chapters. Possibly even the Publisher as well as the respondent

No.1 lost sight of the first edition and referred to the second edition only which was published in 1989 and which had only 22 chapters. Therefore, it is clear that the reference in both these letters is to the second edition which was published in 1989. The book was first published in 1983 and no such division is indicated in the book as noted by the Committee and also in the letter.

##. Learned counsel Mr. Nanavati further submitted that on the first page of the letter dated 1st February 1980, there is an endorsement, and below that the date reads as 10/1. He submitted that if the letter was actually dated 1/2/80, there could not have been an endorsement dated 10/1. So far as the letter dated 26th March 1982 is concerned, there is an endorsement on the first page which is dated 2/4/82. In both these letters, we find that there is an endorsement in manuscript. Comparing with the other copies purported to have been certified to be true copies by the publisher, no such endorsement is found in any letter. Respondent No.1 subsequently came out with a case that the letters which he has produced are the copies forwarded by the Publisher. The question is: how these letters are with endorsements? It appears that with a view to support the defence version, publisher must have been asked to forward the letters on which the endorsements were made as in usual course is being made to show that in ordinary course the letters were received. It is only after the Division Bench made orders, the publisher came out with the true copies. Thus, these letters were produced before the learned Single Judge as to have received in normal course to get an order in favour.

##. With a view to show that two others were co-authors, the respondent No.1 produced letters Annexure A-7 and A-8 dated 2.1.1980 and 26.3.1982 respectively, addressed by the publishers. The respondent No.1 has specifically stated that the book in question is a modular book and the respondent No.1 was responsible for only eight chapters out of 22 chapters.

##. It is required to be noted that the respondent No.1 in his affidavit has nowhere stated that he is producing true copies (xerox of the original) of the letters received by him. Even the learned advocate has not signed the said documents as "true copy" in token of having seen the original and on comparison having been found the same to be true. Original documents are to be placed on the record. The copies produced are not certified as true copies. The copies produced with the

affidavit are supposed to be xerox copies of the original which were received by him as he has produced xerox copies. It is required to be noted that the respondent No.1 has not come out with the case that while filing his affidavit (i.e. petition), he had no original letters in his possession and that he called for the same subsequently from the publishers. In paragraph 9 of the affidavit dated 24th August 1994, the respondent No.1 has specifically stated as under:-

> "I further submit and explain what happened on 21 July 1994 by placing on record two letters dated 1st February, 1980 and 26th March 1982. I submit that I produced these two letter 'as they were given to me' by the publisher on my request as the previous ones were not traceable wherein the allocation of the chapters among three of the coauthors were allotted by the publishers before the Text Book came to be published."

Thus, it is specifically stated that the respondent No.1 was producing these letters in the same condition as they were given to him. If the xerox copies are perused, it becomes clear that both the letters bear the endorsement of the person who received the letters. Publisher has placed on record true copies without such endorsements. Below the endorsement on the letter dated 1st February 1980, the date is put as 10/1, while on the letter dated 26.3.1982, the endorsement is dated 2.4.1982. If, as contended by the respondent No.1 , he had produced the copies of the letters 'as they were given to him', these endorsements could not have been there on the letters. Thus it is clearly beyond any doubt that statement is absolutely incorrect.

##. Mr. Nanavati further submitted that in the letter dated 1st February 1980, the telephone numbers which are printed on the letter head had seven digits. Mr. Nanavati submitted that in 1980's in Delhi, telephone numbers had only five digits. He therefore, submitted that these letters could not have been written in the year 1980 as canvassed. The letter is signed by its author, and it is not a copy of the letter dated 1.2.1980. Mr. Nanavati submitted that if the author forwarded copies of the letters originally written in 1980 and 1982, then the same would not bear the signature and the noting which were found on both the letters.

##. On behalf of the appellant, A.K. Dua has filed an additional affidavit dated 25.7.1994 pointing out that the respondent No.1 has referred to and relied upon the

letters which we have referred to hereinabove. The letters were produced by the respondent No.1 at Annexure A-7 and A-8. It is specifically averred that the letters which have been produced do not appear to be genuine and by producing false evidence before the Court, the respondent No.1 had lead the Court to pass an order in his favour. By filing this affidavit, the deponent has pointed out that the telephone numbers printed on the letterhead were not in existence at the time when the letters were alleged to have been written. Telephone number of Wiley Eastern Limited in the 1984 Delhi Telephone Directory is shown as 261487 only six digits. On behalf of the appellant it is submitted that the respondent No.1 has not come with clean hands before this Court, and has further pointed out that this is a pre-condition for invoking discretionary jurisdiction of this Court. A person who does not come with clean hands is not entitled to claim any relief. By misrepresenting the facts and by misguiding the Court, the respondent No.1 has obtained orders. The telephone numbers were changed subsequently in or about the year 1986 and, therefore, these letters must have been got up in or after 1986 and were not written as is sought to be canvassed by the respondent No.1, i.e. 1st February 1980 and 26th March 1982.

##. In the L.P.A., affidavit is filed by Asang Machwe, son of Dr. Prabhakar Machwe, on behalf of the Publisher M/s. Wiley Eastern Limited. who was at the relevant time Chief Executive and Managing Director of M/s. Wiley Eastern Limited. In paragraph 3 of the affidavit, he has specifically stated that the respondent No.1 is an agricultural Economist, Prof. G.V. Shenoy is Operations Research Specialist and Prof. Subhash Sharma has Mathematics and Management background. It is further stated that the chapters agreed upon were in line with these background which was approved through the deponent. It is further stated that as per the arrangement, the respondent No.1 wrote Part-I (Statistics) Chapters, 1, 3, 4, 5, 10, 13 Part -II (OR) Chapters 17 and 19; Prof. G.V. Shenoy wrote Part I (Statistics) Chapters 6, 8, 9, 12 Part-II (OR) Chapters 14, 15, 16, 18, 20, 21 and 22. In the same way, Prof. Subhas Sharma wrote Part I (Statistic) Chapters 2, 7, 11 Part II (OR) Nil Part III Supplementary reading in Mathematics. Even this affidavit has reference to only 22 chapters. It is further stated by the deponent that the first edition as per the aforesaid arrangement was published in the year 1983 and the book was re-printed twice in July 1985 and April 1987. However, the first edition placed before the

Court has 23 Chapters and not 22 Chapters as averred by the Publisher. From this fact also, it is very clear that keeping in mind the 1989 edition which had 22 chapters, the letters have been typed and produced on the record, and, even in this affidavit averments are made with regard to the edition having 22 chapters only. Thus, in the affidavit, there is no reference to the first edition of 1983 which had 23 chapters. In view of this background, it is very clear that the letters are subsequently fabricated with a view to support the case put up by the respondent No.1 , and Mr. A. Machwe on behalf of the publisher has also come forward before the Court to support the respondent No.1 and has filed an affidavit which is false to his knowledge. Thus, the respondent No.1 as well the publisher have have filed false affidavits within their knowledge. Not only that, but have also fabricated false evidence to save the skin of the respondent No.1. Considering the fact that the second edition which was published in the year 1989 had 22 chapters, it is rightly contended by the learned counsel Mr. Nanavati that the letters have been prepared in or after 1989 and were not written in the year 1980 and 1982.

##. The Publisher, in paragraph 5 of his affidavit has tried to suggest that the respondent No.1 wanted that the publisher must send the original letter indicating the allocation of responsibilities of writing chapters on the subjects which they were supposed to be expert; That the respondent No.1 also inquired if there was any other correspondence with the publisher which would indicate the chapters he had written and what role he had played in writing the chapters in the book; That after enquiry at the office of the publisher, the deponent located office copy of letter dated February 1, 1980 and also the office copy of letter dated March 26, 1982. He has specifically stated that the book was published in the year 1983. In paragraph 6 of the affidavit it is stated that the letters were written to the respondents on 1.2.1980 and 26.3.1982 which were not traceable with the respondent No.1 and as he wanted to produce the said letters before the enquiry committee, copies of the said letters were sent to the respondent No.1. The deponent has further stated that "the contents of the said letters are true and correct and the contents thereof were in existence on the dates shown in the letters themselves." In paragraph 8, the deponent has come out with the averments that due to inadvertence, he did not write 'true copy' on the said letters. He has further stated that though the letters were typed on fresh letterheads of the Company printed somewhere in the year 1992, the

contents of the said letters are that of office copy of letters dated February 1, 1980 and March 26, 1982. Along with the affidavit, the deponent has produced copies of the aforesaid two letters purported to have been written on the dates indicated therein.

##. Along with the affidavit, he has also produced copy of another letter dated April 3, 1992 at page 337. The deponent in paragraph 8 has positively stated that:

> "However, I reiterate and affirm that though the letters were typed on fresh letter heads of the Company printed somewhere in the year 1992, the contents of the said letters are that of office copy of letters dated February 1, 1980 and March 26, 1982".

Now, the document at page 337 is also a copy of a letter dated August 3, 1992 addressed to the respondent No.1. Thereon, there are two endorsements as 'true copy'. It is also signed at two places; one signature is original and the other appears to be copy of the signature on the original letter. (This may be in view of xerox copy) Reading paragraph 8 of the affidavit, it is very clear that fresh letter heads of the Company were printed somewhere in the year 1992 and on the letterheads printed in 1992, copies of letters dated February 1, 1980 and March 26, 1982 were typed. To examine these averments, it would be necessary to compare the letterheads at pages 248 and 250 with the letterhead at page 337. In the letterhead at page 337, five telephone numbers are printed, viz. 3276802, 3261487, 3278348, 3267996, and 3278189, whereas in the letter head at pages 248 and 250, there are only three telephone numbers, viz. 3276802, 3261487, and 3278348. If the contention of the deponent that the copies of letters dated 1.2.1980 and 26.3.1982 were typed on the letterheads printed in 1992 is required to be accepted, then the said letterheads should have mentioned the same telephone numbers as that of the letterhead at page 337, which is a letter dated 3.8.1992. It, therefore, becomes evident that the deponent on behalf of the Publisher is not telling the truth before the Court when he states that the letters were typed on fresh letter heads of the Company printed somewhere in the year 1992. Apart from the fact that there is no indication on the face of the letters itself that these were true copies. It is a matter of common knowledge that when a copy of a document is taken, at the place of original signature, it is normally indicated as 'Sd/-' or initials are put but such indication is also not there on these letters; On the contrary, the letters

are actually signed by the author as if the letters are original. Hence it cannot be accepted that these are copies of letters dated 1.2.1980 and 26.3.1980. If these were copies of the letters originally written in 1980 and 1982, then what is the explanation about the endorsements on the letters at page 248 and 250. The copies of the letters produced at pages 338, 339 and 340 are nothing but copies (not carbon copies) of the letters at pages 248, 249 and 250, which has reference to 22 chapters in all; it has no reference to 23rd Chapter. Had these letters been written in the years 1980 and 1982, it ought to have had reference of 23 chapters because the first edition published in 1983 had 23 chapters. The book with 22 chapters was the second edition published in 1989. The respondent No.1 as well as the publisher have come out with a concocted and got up story. These letters were written somewhere in or after 1989. Thus false evidence and fabricated documents are placed before the Court.

##. Mr. Nanavati, learned counsel submitted that in the affidavit, the publisher has made a reference to the negotiation and ultimately the final contract. If there was negotiation and final contract in the year 1980, the contract ought to have been produced on record, and that would have made the scenario clear. However, the contract is suppressed from the Court, though a reference is made, and that makes it clear that true facts are not placed before the Court.

##. In connection with the book and co-author, Mr. Nanavati submitted that co-author Prof. Subhash Sharma serving as Professor in Institute of Rural Management (IRMA), Anand filed an affidavit in support of the petition on 10.3.1993. He has also stated that the respondent No.1 and one Prof. Shenoy were co-authors of the book entitled "Quantitative Technics for Managerial Decision Making". He has specifically stated that this book was jointly authored by them in 1983 and thereafter the said book was repeatedly reprinted and its second edition was brought out in the year 1989. In the affidavit, he has no where stated that there were three divisions, and there is nothing to show that he was informed by the Publisher as to what topics he was required to write or what topics the others were required to write. The said Pro. Sharma has stated as under:-

> "My Institute of Rural Management had initiated inquiry of plagiarism on the basis of the anonymous letter of IIM, Ahmedabad student. However, it has exonerated me from the said charge".

##. The aforequoted portion is not forming part of the typed body of the affidavit, but it is a subsequent addition in manuscript in the affidavit. By emphasising this we do not suggest that the same was incorporated after it was sworn, but it certainly suggests that it was an addition and was a deliberate addition. In this connection, N.V. Pillai who was working with IIMA as Establishment Officer has filed an affidavit in this LPA on 24th April 1995. He has stated therein that in view of the affidavit filed by Prof. Sharma, IIMA wrote a letter to the Director, IRMA on 3.9.1993 inquiring about the veracity or otherwise of the statement made by Prof. Sharma in the affidavit filed by Prof. Sharma before this Court. In reply to the aforesaid letter, IRMA wrote a letter dated 6th September 1993, a copy whereof is annexed to the affidavit. From the letter, it is evident that five senior faculty members examined the charges levelled against the authors of the book and they concluded that the facts of plagiarism are proved, and based on the report, the Director of IRMA communicated the following to Prof. Sharma:

"I have taken the view that your association with this affair constitutes breach of minimum acceptable standards of academic propriety. I therefore have to censure your role in this entire affair and decided that:

a). all the text books co-authored by you other than your and Professor Vitthal's Management Planning and Control shall be withdraw from the Teaching Aids Unit (TAU) and the IRMA Library and shall not be acquired and used by IRMA henceforth;

b). as a symbolic penalty, your increments in professor's grade shall be stopped for a period of three years;

c). you cannot be allowed to continue as Convener, Committee on Research and Publications (CORPAS)."

However, subsequently the matter was put to the entire faculty of the Institute and the faculty members believed that the practices that Prof. Sharma used in the book were not wholly proper and need to be avoided in future. Subsequently, the committee accepted the sanction that the text book involved shall not be used at IRMA and that he will either dissociate fully from their authorship or re-do them; other sanctions communicated earlier were lifted. In the aforesaid letter, Director of IRMA has pointed out that the subsequent decision

communicated to Prof. Sharma does not constitute 'exoneration' but it merely lifted the penalty of stoppage of three increments imposed on him. The penalty imposed on his book continued to be in force.

##. Learned counsel Mr. Nanavati, in view of the affidavit filed by Prof. Sharma and the letter produced on record addressed by IRMA submitted that even the co-author who indulged in plagiarism with reference to the same book, was punished by another Institute. Despite the punishment, Prof. Sharma has stated in the affidavit filed by him that IRMA has exonerated him from the charge. Hence, the averment so far as exoneration is concerned, is not correct. One thing is certain; in the field of education, plagiarism is not approved and should not be approved.

##. In view of what is stated hereinabove, Mr. Nanavati, learned counsel submitted that the respondent No.1 has not come with clean hands to the Court. The respondent No.1 has managed to produce on record letters purported to have been written by the Publisher in the years 1980 and 1982, and reading the letters with reference to the first edition having 23 chapters, it is absolutely clear that the letters are fabricated documents as there is reference to only 22 chapters, and it can, therefore, be said that the respondent No.1 has not come to the Court with clean hands.

##. A Division Bench of this court in the case of N.D. PATEL & CO. vs. MANUBHAI reported in 1984 (1) GLR 386 has held that suppression of important and material facts alone would justify non-interference by the High Court.

##. A learned Single Judge of this Court in the case of VIJAY J. GADHVI vs. STATE reported in 1988 (2) GLR 902 held that positive falsehood and/or falsehood by suppression, both stand on the same footing. The Court further held that a person who comes before the High Court with unclean hands and snatches the order of interim relief on the basis of deliberate suppression of material facts, is not entitled to be heard at all. The Court further observed that such a person is liable to be proceeded under the provisions of Contempt of Court for misusing and/or abusing the process of the Court.

##. Mr. Nanavati, learned counsel submitted that a false affidavit filed in the Court exposes the intention of the concerned party in perverting the course of justice. He submitted that the due process of law cannot be permitted to be slighted nor the majesty of law be

made a mockery by acts or conducts on the part of the parties to the litigation or even while appearing as a witness. Relying on the Apex Court's judgment in the case of DHNANJAY SHARMA vs. STATE OF HARYANA reported in AIR 1995 SC 1795, Mr. Nanavati submitted that anyone who makes an attempt to impede or undermine or obstruct the free flow of unsoiled stream of justice by resorting to filing of false evidence, commits criminal contempt of court and renders himself liable to be dealt with in accordance with law. Mr. Nanavati, at the cost of repetition submitted that before the learned Single Judge, the respondent No.1 herein -original petitioner- produced copies of letters dated 1st February 1980 and 26th March 1982 purported to have been issued by the Publisher in the ordinary course of business on the dates mentioned in the letters. He did not come out at the relevant time that these are xerox copies of original letters or even he did not come out with a case that original being lost by him, the publisher has forwarded the copies from the original and he is producing the same in the same condition as received by him. It is only after it was pointed out that the telephone numbers shown in the letterhead are of much later point in time, the respondent No.1 came out with an altogether unsustainable explanation i.e. of the copies of original forwarded by the Publisher on the letter heads printed afresh subsequently. The publisher fully tried to support the respondent No.1 herein. However, both have failed in explaining the absence of reference to 23rd Chapter in the letter. As stated hereinabove, the publisher has also failed to explain as to how in one letter head printed in 1992 there were five telephone numbers and in the other there were only three telephone numbers. We have dealt with this and other aspects in detail earlier, and, therefore, it is not necessary to repeat. Suffice it to say that false affidavits and fabricated documents were filed before the Court to establish that the respondent No.1 is not responsible for plagiarism.

##. In paragraph 40 of the judgment in the case of DHANANJAY SHARMA (supra), the Apex court held as under:

> " .... Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of

> justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by any one resorting to filing of false affidavit or giving of false statements and fabricating false evidence in a Court of law. The stream of justice has to be kept clean and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the Court and interfere with the due course of judicial proceedings or the administration of justice."

##. One more aspect required to be taken into consideration is that neither the Publisher nor the respondent No.1 in their respective affidavit has referred as to when the respondent No.1 informed the Publisher about the need of copies of the aforesaid letters. There is specific reference to the date of the letters, but it is nowhere stated as to when the respondent No.1 called upon the Publisher to forward copies of the letters. Neither the respondent No.1 nor the publisher has produced on record any correspondence calling upon the publisher to forward copies of the letters. In the absence of reference to the dates for q calling the publisher to forward copies as also in the absence of statement by publisher as to on which date it forwarded the copies to the respondent No.1, and in the absence of non-explanation of chapter No.23 in the letter or in the affidavits filed by the publisher and the

respondent No.1 , the say of the respondent No.1 cannot be accepted.

##. It is also required to be noted that it is stated on oath by the Publisher that on the letterheads of the Company which were printed in the year 1992, the text of the letters were typed and were forwarded. If that was so, as stated above, how the endorsement is found on the letters? This is not explained by the respondent No.1. When the letters were produced before the Court for the first time, it was produced as if it were the original letters, received in the normal course of business. At that time, it was not stated that these are copies of letters originally written on February 1, 1980 and March 26, 1982 typed on fresh letterhead printed in 1992. The respondent No.1 and the publisher came out with this story only when they were confronted with the discrepancy in telephone number. We have, therefore, no doubt in our minds that the respondent No.1 produced these fabricated letters before the Court to get a favourable order. In view of this, as the respondent No.1 here, original petitioner, had obtained the order from the learned Single Judge by filing false affidavit, the order passed by the learned Single Judge is required to be quashed and set aside. Consequently, on this ground alone, the appeal is required to be allowed.

##. It seems that in the judgment of the learned Single Judge, there is reference to the Institute as a recognised Institute by the University, but infact it is not a 'recognised' institute, but it was merely an 'approved' Institute. The provisions with regard to "affiliated", "recognised" and "approved" institutes are required to be borne in mind.

##. The learned single Judge held that the order is passed in breach of section 51.A of the Gujarat University Act. Reliance for this purpose was placed before the learned Single Judge on the decision of the Division Bench in Spl. C.A. No. 6555/98 decided on 20th May 1993 (now reportedK.S. JOY vs. INSTITUTE OF MANAGEMENT 1994 (1) GLR 57). The request of the Institute for surrendering its status with effect from 31.12.1992 as approved Institute was accepted; however, learned Single Judge held that by resolution passed on 26.3.1993, University could not have accepted the request with retrospective effect, and, therefore, section 51.A of the Gujarat University Act was applicable on the date on which the action was taken.

##. Learned Single further held that the petition is

maintainable under Article 226 of the Constitution against a person as well as an authority. Learned Single Judge held that the Institute is discharging public duty since it is imparting education, and hence it is amenable to the writ jurisdiction of the Court; on the date of termination, the Institute was 'recognised' by the Gujarat University and since the action was in breach of principles of natural justice, as no effective remedy is provided, the petition is maintainable.

##. On behalf of the appellant it is submitted that the learned Single Judge, without considering the submissions made on behalf of the appellant that the Institute is neither a 'State' nor an instrumentality of the State nor an agency of the State, has disposed of the petition; that the Learned Single Judge erred inholding that the order of termination is punitive in nature; that the learned Single Judge further erred in holding that the order has been passed because the petitioner did not agree to pay penalty of Rs.75,000/-; that the learned Single Judge also erred in holding that the principle of natural justice was not followed in this case inasmuch as no show cause notice was given and inquiry committee was constituted behind the back of the petitioner; that the learned Single Judge further erred in holding that the committee did not call the petitioner before finalising the inquiry report and the petitioner was not given an opportunity of hearing or cross examination.

##. The learned single Judge held that the order is passed in breach of section 51.A of the Gujarat University Act. Reliance for this purpose was placed before the learned Single Judge on the decision of the Division Bench in Spl. C.A. No. 6555/98 decided on 20th May 1993 (now reportedK.S. JOY vs. INSTITUTE OF MANAGEMENT 1994 (1) GLR 57). The request of the Institute for surrendering its status with effect from 31.12.1992 as approved Institute was accepted; however, learned Single Judge held that by resolution passed on 26.3.1993, University could not have accepted the request with retrospective effect, and, therefore, section 51.A of the Gujarat University Act was applicable on the date on which the action was taken.

##. Learned counsel for the appellant made a grievance that though a specific contention was raised that the Institute is not a 'State', the learned Single Judge, without expressing any opinion with regard to the institute whether it is a 'State' or not, disposed of the petition as a Letters Patent Appeal was pending before the Division Bench against a decision of another learned

Single Judge who took the view, in the absence of relevant material, that IIMA is a State. Learned Single Judge was of the view that for issuance of a writ under Article 226 for a purpose other than enforcement of fundamental right, it is not necessary to decide whether the concerned body comes within the ambit of Article 12 or not. Learned Single Judge examined the question that the Institute is discharging its duties by imparting specialised education in business management. The management is sponsored by the Government and is under the sole control of the Government, and, therefore, it is a 'State'.

##. On behalf of the respondent No.1 , learned counsel Mr. A.D. Shah submitted that the Court has examined the scope of Article 12 of the Constitution of India. According to the learned counsel for the respondent No.1, the Court did examine certain decisions in this regard, and in the circumstances, eventhough the Court has not recorded a finding that the Institute is a State, and even if it is presumed not to be a 'State", the Court has also examined the matter from another angle, viz. instrumentality of the State. Learned counsel for the respondent No.1 submitted that there is non-compliance with section 51.A of the Gujarat University Act. He further submitted that section 52.A of the Gujarat University Act would not be attracted in the facts of this case; In view of the fact that the Institute surrendered the status w.e.f. 31.12.1992, but the date on which the order was made, the Institute was a recognised Institute. Learned counsel for the respondent No.1 further submitted that the argument of the appellant is required to be rejected as before the learned Single Judge, it was not argued that if section 51.A of the Gujarat University Act is attracted, then section 52.A of the Gujarat University Act will also apply, and in the absence of any argument, the contention cannot be permitted to be raised before this Court. Learned counsel for the respondent No.1 further submitted that no notice was given containing the charges and the respondent No.1 was not called upon as to why penalty should not be inflicted. He further submitted that as there was no approval as contemplated under sec. 51.A (1) (b) of the Gujarat University Act, the order of dismissal is bad, and, therefore, this Court need not interfere in this L.P.A. It was alternatively submitted that section 52.A cannot take away the right of the Court to decide the dispute for which reliance was placed on the decision which we have referred to hereinabove, viz. K.S. JOY (SUPRA). It was submitted that the tape-recorded version makes it clear that there was an

unauthorised demand of money and the demand of money was nothing but by way of penalty in the absence of rule and as the respondent No.1 did not agree to pay the amount, his services have been terminated. With regard to the letters addressed by Prof. G. Sharan and Prof. Dholakia, members of the Committee, it was submitted that the termination letter does not refer this aspect. The respondent No.1 had no reason to contact these two persons, and, therefore, he had no reason to have any conversation. Mr. Shah, learned counsel, with reference to the letters addressed by two members of the Committee, submitted that without calling the witness for cross examination or placing any acceptable material, letters cannot be accepted and the contention of the appellant in this regard must be rejected.

##. The submission on behalf of the respondent No.1 that the two letters written by the Professors cannot be used against the respondent No.1 as the Professors were not called as witnesses and were not permitted to be cross-examined, is required to be rejected. The respondent No.1 ought to have made an application for calling the witness, if he wanted to cross examine them. The respondent No.1 cannot abuse them behind their back. It was open for the respondent No.1 to submit an application indicating the reasons for cross examination. It is known that if there are disputed questions, the parties cannot invoke writ jurisdiction. Even in writ petition, it was open for the respondent No.1 to make out a ground for calling the witness for cross examination. Learned counsel appearing for the respondent No.1 could not point out any material from which an inference can be drawn that the letters written by members of the Committee are got up. So far as the question of unauthorised demand is concerned, it has no substance. With a view to avoid demotion, freeze of increment, suspension of consultancy privilege, the offer was made. Hence we find no merits in the submission.

##. In the case of K.M.A. MEMON vs. INDIAN INSTITUTE OF MANAGEMENT reported in 1993 (1) GLH 407, a learned Single Judge of this Court held that the Institute is a 'State' within the meaning of Article 12 of the Constitution of India as (1). Chairman of the Board of the Institute is appointed by the Central Government besides representatives of the Government nominees on the Board; (2). the Institute is receiving huge grant from Government; (3). Institute is performing public function in the field of management education and research. Learned Single Judge considered the decision in the case of SAINIK SCHOOL EMPLOYEES' ASSOCIATION vs. DEFENCE

MINISTER reported in AIR 1989 SC 99, AJAY HASIA vs. KHALID MUJIB SAHERA reported in AIR 1981 SC 487, and RAMANNA D. SHETTY vs. INTERNATIONAL AIRPORTS AUTHORITY reported in AIR 1976 SC 1628. Considering the test laid down in AJAY HASIA's case (supra), the learned Single Judge held that it is a 'State'. According to learned Single Judge, infact the entire functioning is, as such, by the State Government and the Central Government; Overall control vests in the Governmental Authorities. The main object of the Institute is to prepare students for the purpose of modern management and like aspects of the management; And, once it is held that the IIMA is a 'State" within the meaning of Article 12 of the Constitution of India, application of Articles 14 and 16 would be attracted.

##. Learned Single Judge who delivered the impugned judgment before us as well as the judgment of the Division Bench in the case of K.S. JOY (supra) seems to have not discussed and decided the issue whether IIMA is a 'State' or not though specifically request was made to the Division Bench in the case of K.S. Joy (supra) and the learned Single Judge who delivered the impugned judgment to decide the issue. The Division Bench in the case of K.S. JOY (supra) observed in paragraph 5 as under:

"5. As far as the contention that respondent No. 1 - IIMA is 'State' within the meaning of Art. 12 of the Constitution of India is concerned, it is an undisputed position that in Special Civil Application No. 6845 of 1987 decided on October 24, 1991, a learned single Judge of this High Court (Coram: J.N. Bhatt, J.) has held that respondent No.1 - IIM is 'State' within the meaning of Art. 12 of the Constitution of India. However, the said decision is challenged in Letters Patent Appeal before the High Court and it is pending. (Neither side has given the particulars of the L.P.A. but it is admitted by both the sides that the L.P.A. is still pending.) In view of this circumstances and having regard to the facts and circumstances of the case, we do not express any opinion as to whether respondent No.1 - IIM is 'State' within the meaning of Art. 12 of the Constitution of India. In our opinion, the petition is capable of being decided even if this question is not examined and decided by us in this petition. Even the learned counsel for the petitioner has not pressed that this question

should be decided in this petition."

Even before the Division Bench in the case of K.S. JOY, a contention was raised that the petitioner therein was a workman and therefore provisions of Industrial Disputes Act were applicable. However, the Division Bench observed:

"We do not propose to examine this question and we proceed to decide this petition without expressing any opinion on this issue".

##. The Division Bench in paragraph 7 expressed the view that even if the question with regard to applicability of Article 12, i.e. to say whether IIM is a State or not, is not decided, the petition can be entertained. Learned Judges were of the view that in the case of SHRI ANADI MUKTA SADGURU S.M.V.S.J.M.S. TRUST vs. V.R. RUDANI reported in AIR 1989 SC 1607, (hereinafter referred to as ANANDI MUKTA) the Supreme Court has held that "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. In view of this position of law, the Court proceeded to examine whether positive obligation flow from the provisions of the Gujarat University Act or not.

##. Learned counsel Mr. Nanavati for the appellant submitted that IIMA is not a State as contemplated under Article 12 of the Constitution; That it is neither an instrumentality nor an agency of the Government; That it is not a public authority exercising statutory powers - whether governmental or quasi governmental. He further submitted that it has no power to issue rules, bye-laws or regulations having the force of law; That it has no power to make statutory appointments. Mr. Nanavati further submitted that in case of CHANDER MOHAN KHANNA v. NCERT reported in AIR 1992 SC 76, the Court pointed out that the powers, functions, finance and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. He invited our attention to paragraph 2 of CHANDER MOHAN KHANNA's (supra) case, where the Apex Court observed as under:

"There are only general principles but not exhaustive test to determine whether a body is an instrumentality or agency of the Government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with governmental character. It may be relevant factor if the institution or the Corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case."

##. Mr. Nanavati further submitted that in the aforesaid paragraph, the Apex Court referred to the judgments in the case of (i). SUKHDEV SINGH v. BHAGAT RAM (1975) 1 SCC 421, (ii). R.D. SHETTY v. INTERNATIONAL AIRPORT AUTHORITY (1979) 3 SCC 489, (III). AJAY HASIA V. KHALID MUJIB SEHRAVARDHI (1981) 1 SCC 722 and (iv) SOM PRAKASH REKHI v. UNION OF INDIA, (1981) 1 SCC 449.

##. Mr. Nanavati further drew our attention to paragraph 3 of the judgment, which reads as under:

"Art. 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does

not render such bodies as "State" under Article 12."

##. The Apex Court, in the aforesaid paragraph also pointed out that the State control, however vast and pervasive, is not determinative. The Court further held that financial contribution by the State is also not conclusive. Thereafter, the Apex Court observed that:

"The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activities and governmental functions of vital public importance, there may be little difficulty in identifying the body as 'State' within the meaning of Art. 12 of the Constitution." (emphasis supplied by us).

##. The facts of that case are also required to be kept in mind. NCERT was a Society registered under the Societies Registration Act, having its own Memorandum of Association and rules for internal management. In paragraph 4 of the judgment, the Apex Court has discussed the relevant part of the Memorandum and the Rules etc. In paragraph 5 the Court pointed out that the object of the NCERT was to assist and advice the Ministry of Education and Social Welfare in the implementation of the Governmental policies and major programmes in the field of education particular school education. NCERT undertakes several kinds of programmes and activities connected with the co-ordination of research extension services and training, dissemination of improved educational techniques, and collaboration in the educational programmes. It also undertakes preparation and publication of books, material, periodicals and other literature. The Apex Court in paragraph 5 pointed out that these activities are not wholly related to governmental functions. The affairs of the NCERT are conducted by the Executive Committee comprising of Government servants and educationists. The executive committee would enter into arrangements with Government, public or private orgnisations or individuals in furtherance of the objectives for implementation of programmes. The Apex Court further pointed out that the funds of the NCERT consists of (i). grants made by the Government, (ii). contribution from other sources, and, (iii). income from its own assets. The Apex Court

further pointed out that governmental control was confined only to the proper utilisation of the grant. After discussing all these, the Apex Court recorded a finding in paragraph 5 that:

"The NCERT is thus largely an autonomous body".

##. In this judgment, the Apex Court has also considered its earlier judgment in the case of TEKRAJ VASANDHI alias K.L. BASANDHI v. UNION OF INDIA reported in (1988) 2 SCR 260 : AIR 1988 SC 469. In that case, the Court was required to determine whether the Institute of Constitutional and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was the then Speaker of the Lok Sabha. Out of the five Vice-Presidents three were the then Central Ministers; the other two were the then Chief Justice of India and the Attorney General. The objects of the society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation. It further found that though the annual financial contribution from the State was substantial, it was entitled to receive aid from the public and in fact, received contributions from other sources. It is further observed that its objects were not governmental business. As regards the argument that the government exercised pervasive control over ICPS, the Court pointed out - (at page 481 of AIR) - that:

"In a Welfare State ... .. Governmental control is very pervasive and touches all aspects of social existence. ..... A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

In the light of all these factors, it was held that ICPS was not "State".

##. It would be worthwhile to compare the cases of NCERT and IIMA with a view to ascertain whether IIMA can be said to be a 'State" within the meaning of Article 12 of the Constitution or an instrumentality or agency of the

State. We are of the view that from the record it is clear that IIMA does not have any share capital and there is no question of capital held by the Government.

With regard to the expenditure, whether entire amount comes from the State coffers or not, the record makes it very clear that the Government is not financing the Institute for its entire expenditure. Earlier, Government's contribution was 40% and now it is reduced as it is clear from the affidavit. The Institute has got its own sources of income. It gets donations, funds etc.

With regard to monopoly status conferred by the Government, it is required to be noted that the Institute is not a monopoly institute. There are several Institutes rendering similar education in the Country.

With regard to deep and pervasive control, it is required to be pointed out that all the decisions rests with the management. The management, teaching, research, training, consultancy, institution building, the conduct of various academic programmes, the recruitment of faculty and staff etc. are taken by the Board, Board's Committee, Director and faculty and staff committees. So there is no question of deep and pervasive state control. The Institute also cannot be stated to be discharging any function of the Government which is ordinarily a governmental function. Management education is not a fundamental right and even Government is not duty bound to provide management education.

The Institute was not set up by transferring a government department. It is a registered Society under Co-Operative Societies Act. The Institute fulfills the combination of conditions spelt out in the NCERT judgment, and hence is not a 'State' or its 'instrumentality'. There is no question of heavy State aid or unusual degree of Government control over management. There is no question of providing public service by the body which is an obligatory function of the State.

In the circumstances, Mr. Nanavati, learned counsel appearing for the appellant has rightly submitted that in direct comparison with the case of NCERT, when NCERT has been held not to be a State by the Apex Court, IIMA does not qualify to be a State. In case of IIMA, if points for determination are analysed and perused, it becomes clear that IIMA cannot be said to be a 'State' within the meaning of Article 12 of the Constitution. Considering the facts in the present case, in view of the

Supreme Court's judgment in the case of NCERT, it cannot be said that IIMA is a State.

##. In paragraph 9 of the decision in the case of CHANDER MOHAN, the Apex Court also considered the case of RAMCHANDRA IYER reported in AIR 1984 SC 541 where the Apex Court held that Indian Council for Agricultural Research (ICAR) was "State" under Art. 12. The Apex Court observed that:

> "But it may be noted that ICAR was originally an attached office of the Government of India and its position was not altered when it was registered as a Society. That case, therefore, is clearly distinguishable."

##. In the case of B.S. MINHAS vs. INDIAN STATISTICAL INSTITUTE reported in AIR 1984 SC 363 it was pointed out to the Apex Court that composition of Indian Statistical Institute is dominated by the representatives appointed by the Central Government; that the money required for running the Institute is provided entirely by the Central Government and even if any other moneys are to be received by the Institute it can be done only with the approval of the Central Government, and the accounts of the Institute has also to be submitted to the Central Government for its scrutiny and satisfaction. It was further pointed out that the society has to comply with all such directions as may be issued by the Central Government, and the control of the Central Government is deep and pervasive and, therefore, Indian Statistical Institute is an 'authority' within the meaning of Art. 12 of of Constitution. After considering all these submission, in paragraph 21 of the judgment, the Apex Court held that the Indian Statistical Institute is an 'authority' within the meaning of Art. 12 of the Constitution.

##. Shri A.K. Dua, along with his affidavit dated 28th September 1993 has annexed a copy of the opinion expressed by the Union of India. A suggestion was received from the Commissioner for Scheduled Caste & Scheduled Tribe that autonomous bodies, including Municipal Corporations, Co-operative institutions, Universities, etc. should be asked to make reservations for scheduled Castes and Scheduled Tribe in the matter of employment in service under their control. It was also suggested that if the word "State" occurring in Article 12 of the Constitution did not cover these bodies, the Constitution should be amended suitably. The question was considered in consultation with the Ministry of Law

and Justice with particular reference to the interpretation of the word "State" in Article 12 of the Constitution. The opinion of the Ministry of Law was that the word "State" in this article of the Constitution while covering the Municipal Corporations would not cover the other autonomous bodies, co-operative Institutes, Universities. etc. Relying on this opinion, it is contended by the Institute that even the Union of India is of the opinion that all autonomous Institutes which are engaged in imparting education cannot be said to be "State" within the meaning of Article 12 of the Constitution.

##. The Institute has also denied the allegation of the respondent No.1 that the entire cost of the building was borne by the Government and has stated that the say of the respondent No.1 is thoroughly misconceived. With regard to the Chairman of the Institute, it is stated by the Institute that no doubt he is appointed by the Government, but the Director of the Institute is appointed by the Board of Governors with the approval of the Government of India. There are no restrictions on the powers of the Director. Duties and functions of the Director are also not prescribed by the Government. Merely because the Chairman is appointed by the Government of India, the Institute would not come within the purview of the "State" within Article 12 of the Constitution.

##. With reference to audit, in the affidavit filed on behalf of appellant herein in Spl. C.A. No. 77/93, it is pointed out that the accounts of the institute are subject to 'super imposed audit' by Controller and Auditor General of India, but this is only for the purpose of verifying the expenditure of grant given by the government. It is further submitted that the Institute has its own audit system through private auditors like any other private organisation. Merely because Controller and Auditor General conducts super imposed audit for limited purpose of verifying the utilisation of grants given by the government ipso facto would not make the functions of the institute subject to approval or sanction of the government or governmental agencies so as to bring the institute within the purview of Article 12 of the Constitution.

##. In the case of GSFC LTD vs. ASSOCIATION OF OFFICERS, GSFC reported in 1995 (2) GLH 179 Honourable Mr. Justice B.N. Kirpal, Chief Justice of this High Court as His Lordship then was, sitting in a Division Bench had an occasion to consider the question whether

GSFC is a State or not. Learned Single Judge held that it is a State. The facts are somewhat similar to the present case. The respondents' services were regulated by service rules framed by GSFC which enabled the Company to discharge or determine services of employees after confirmation. After confirmation, an employee in Gr.I or Gr. II may be discharged from the services of the Company for sufficient reasons by the competent authority after giving three months' notice in writing in that behalf or after payment of salary in lieu of such notice. The Managing Director of the Company made an order discharging the respondents. The respondents preferred an appeal before the Company itself and thereafter a Special Civil Application was preferred challenging the order of discharge. The appellant submitted that it was not a 'State', and, therefore, the petition under Article 226 of the Constitution was not maintainable. Learned Single Judge arrived at a conclusion that GSFC was a 'State' within the meaning of Article 12 of Constitution and the respondents were entitled to be reinstated as their services could not have been discharged without following the principles of natural justice. Learned Single Judge gave several reasons, ten in number, to arrive at a conclusion as to why the Company would fall within the scope of Article 12 of the Constitution. Before the Division bench, number of cases were cited for determining the question as to whether the GSFC was a State or not. In paragraph 10 of the judgment, the Division Bench considered the judgment in the case of TEKRAJ vs. UNION OF INDIA reported in AIR 1988 SC 469 and pointed out that though the Institute of Constitutional & Parliamentary Studies (I.C.P.S.) was initially accommodated in the parliament house and shifted lateron, the first President of the society was the then Speaker of the Lok Sabha, out of the five Vice-Presidents three were the then Central Ministers and the other two were the then Chief Justice of India and the Attorney General the Supreme Court came to the conclusion that the objects of I.C.P.S. were not governmental business and was outside the purview of Article 12 of the Constitution of India. The Division Bench in paragraph 11 pointed out that even the Apex Court in the case of CHANDER MOHAN (supra) held that:

> "Art. 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State".

In GSFC's case, the Division Bench in paragraph 12 also considered the case decided by Kerala High Court

reported in AIR 1982 KER 248 in which the Kerala High Court came to the conclusion that M/s. Cochin Refineries Limited was not an instrumentality of the State. That was a Company in which 53% of the share was held by the Central Government, 15% by Government of Kerala, Life Insurance and General Insurance and 26% by Philips Petroleum Company of United State of America. Besides this, there were 2000 shareholders, including Corporate bodies. The High Court held that "the fact that five out of nine Directors are Government nominees is not sufficient to say that the Government has exclusive or unusual hold over the management etc. The High Court further held that this conclusion is valid even taking into consideration certain reservations regarding approval of Central Government. That was a case where the Company was enjoying monopoly since it was dealing with precious commodities like petroleum and petroleum products and the like and such an activity is of public importance, viewed in the light of importance of the commodities in the light of the Nation. The Court pointed out:

> There is no material to show that any activities of the Government has been handed over to the Company."

The Kerala High Court held that the Company is not an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

The decision of the Kerala High Court was approved by the Delhi High Court in the case of P.B. GHAYALOD vs. M/S. MARUTI UDYOG LTD., and OTHERS reported in AIR 1992 DELHI 145, wherein the Government was holding 60% shares. The Delhi High Court held that foreign companies collaborating with Public Corporations should not be subjected to the rigour of Article 14 and, in any case Maruti Udyog Limited was not a "state" within the meaning of Article 12 of the Constitution. That decision was challenged before the Apex Court by Special Leave Petition being No. 17844 of 1991 but the said petition was dismissed on 6.12.1991.

##. In paragraph 13 of GSFC's case, the Division Bench has taken into consideration the views expressed by this High Court in other cases, i.e. (1).Vijaysinbh S. Waghela v. Gujarat Alkalies & Chemicals Ltd (SCA No. 5939/89) decided by Division Bench on 16.7.1988 which took a view that M/s. Gujarat Alkalies & Chemicals Ltd, in which the Government had share, was not a 'State". (2).Spl. C.A. No. 1664/91 decided by a Single Judge on

13.12.1991 wherein with regard to M/s. Gujarat Insecticides Limited, similar views were expressed. (3).A decision of the Single Judge of the Andhra Pradesh High Court in the case of M/s. Navbharat corporation, Bombay vs. Nagarjuna Fertilizers & Chemicals Ltd, 1990 (2) ALT 615 wherein the Court concluded that the said Company was not a 'State". In that case, the Government was holding share to the tune of 17.78% of the equity capital and out of 15 Directors, three were nominated by the Government.

In GSFC's case, the Division Bench also considered the case of ANADI MUKTA (supra) and in paragraph 15 pointed out that:

"It was therefore submitted by the learned counsel that even if the appellant is not a State, it should nevertheless be regarded as an 'authority'. It is difficult to agree with this submission because the Supreme Court in that very decision observed that to be a public authority, the person must perform public duty".

The Division Bench in paragraph 17 considered the judgment in the case of LIC v. Escorts Ltd AIR 1986 SC 1370. The Attorney General had in that case submitted that actions of the State or an instrumentality of the State, which do not belong to the filed of public law, but belong to the field of private law are not liable to be subjected to judicial review. While finding considerable force in this contention, the Supreme Court did not discuss in great detail, but it did observe that it did not construe Article 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for the said actions. The Division Bench, after dealing with the question of State venturing into the Corporate world in paragraph 17 of the judgment, held that mere holding of share in the financial institution would not give it the characteristic of 'State'. The Court also pointed out in paragraph 20 that out of 12 persons, only four were government nominees, one was nominated by Industrial Development Bank of India while all other Directors were very eminent persons in their own rights. In the circumstances, the Division Bench held that it is difficult to hold that there is deep and pervasive State control especially when Articles of Association of the Company do not provide for any directions to be issued to it.

##. Following the aforesaid decision of the Division

Bench, in the case of PRAVINBHAI A LINGALIA VS. K.J. MEHTA TB HOSPITAL - reported 1998 (2) GLR 1028, a learned Single Judge held though the government was providing 60% grant-in-aid, merely because the State Government provides grant, it does not show that the Government has any pervasive control in the administration of the Trust, it cannot fall within the four corners of Article 12. Learned Single Judge held that though the Trust is running a hospital, it cannot be said to be discharging functions of public importance and is discharging governmental functions.

##. In the case of ANADI MUKTA, the facts were that there was an award of the Chancellor which was accepted by the State Government as well as by the Gujarat University. All affiliated colleges were required to pay to the teachers in terms thereof. The Trust, instead of implementing the award, served notice of termination upon 11 teachers on the ground that they were surplus and approached the University for permission to remove them. The Vice Chancellor did not accede to their request and he refused the permission sought for. The Trust took a suicidal decision to close down the college to the detriment of teachers and students. The affiliation was surrendered and the University was informed that the management did not propose to admit any student from the academic year 1975-76. It was again a unilateral decision without approval of the University. Thus, the students at large who were studying in the College were the sufferers. The decision was taken contrary to law, viz. Gujarat University Act, 1973. The Trust took up the contentions that:

(i). The Trust is not a statutory body and is not subject to the writ jurisdiction of the High Court;

(ii). The Resolution of the University directing payment to teachers in the revised pay scales is not binding on the trust;

(iii) The University has no power to burden the trust with additional financial liability by retrospectively revising the pay scales;

(iv) The claim for gratuity by retrenched teachers is untenable. It is payable only to teachers retiring, resigning, or dying and not to those removed on account of closure of the college; and,

(v) Ordinance 120 E prescribing closure compensation is ultra vires of the powers of the syndicate. It is at any rate not binding on the trust since it was enacted prior to affiliation of the college.

It is in this background the Court examined the matter. It was not a case of termination of service of a teacher or dismissal or admission of a student, but it was a question of enmass dismissal of the removal of the staff. In paragraph 9 of the judgment, the Apex Court pointed out that the State was not a party. However, the State was impleaded with a view to find out the reaction of the State on the appellants assertion for reimbursement. The Court pointed out that the Court was concerned with the liability of the management of the college towards the employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and another benefits to the employees. The management cannot say that unless and until the State compensates, it will not make full payment to the staff.

In paragraph 11, referring to the two decision of the Apex Court, the Apex Court held that:

"It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasized that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutuory body."

The Apex Court, after considering its earlier decision in paragraphs 11 and 12, observed in paragraph 13 that:

"But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus".
(also see 99 SC 753 at 760).

In paragraph 14, the Court pointed out that :

"When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management."

In the instant case, the IIMA is not a recognized Institute by the Gujarat University. We will point out at a later point of time the distinction between "recognized", "approved" and "affiliated" colleges. The Institute, in the instant case, was merely a private Institute and to provide facilities to the candidates preparing for their Ph.D sought for an approval earlier. The salary of the academic staff was not fixed by the University and the University had no control whatsoever, and, therefore, the reliance placed by the respondent No.1 before learned Single Judge in the instant case, is of no assistance.

##. Mr. Nanavati, learned counsel submitted that in case of K.M.A. MEMON (supra) the learned Single Judge has proceeded on the basis that the facts are not controverted in affidavit in reply. In paragraph 14, learned Single Judge observed as under:

"All these facts are not in dispute. All these averments regarding the constitution and the working of the administration of the IIMA are not controverted, specifically, in the affidavit-in-reply. The aforesaid averments would, undoubtedly, go to show that the overall effective controls including the funds and the supervision remain with the Government at the Centre and the State".

He further submitted that in view of absence of material, the learned Single Judge came to the conclusion, but in the instant case, when relevant evidence was produced before the Court, the Court was required to examine the same, and the learned Single Judge ought to have examined the question raised by the Institute. Learned Single Judge, without expressing any opinion on the relevant issue as LPA was pending, proceeded with the matter further. In the absence of material, if a finding is recorded, that would not bind the other Courts. It cannot be said to be a precedent as

the decision is rendered on admission of a party or the otherwise has not controverted the averments made by the petitioner.

##. In view of what is stated above, it is clear that IIMA is an autonomous body imparting education. For the purpose of admission to the students, as held by the Apex Court in the case of UNNIKRISHNAN V/s. STATE OF A.P. reported in (1993) 1 SCC 645 -about which we will deal in detail hereinafter- the High Court may exercise the jurisdiction to protect right under Article 14. However, in the instant case, the autonomous body is not amenable to the writ jurisdiction in the facts and circumstances of the case as there is no deep and pervasive control of the State on the Institute. The Institute is run on its own through its Board of Directors. Articles and Memorandum of Association do not indicate that it is discharging the function of the State. In view of what is stated hereinabove, it cannot be said to be a 'State' or an 'instrumentality of the State' or an 'agency of the State' which would attract the provisions of Article 12 of the Constitution of India.

##. Mr. Nanavati, learned counsel for the appellant submitted that IIMA is a Society registered under the Societies Registration Act, 1850. It is further pointed out on affidavit that the Institute is an autonomous body, and it is neither controlled by the Central Govt. nor by the State Govt. Mr. Nanavati further submitted that the Institute has various sources of income which includes donation, tuition fees from participants who undergo programme/courses in Management conducted by the Institute, research grants. etc. from non-Governmental association, and only part of recurring expenditure is met with from the governmental grants which comes to less than 40 per cent of the total revenue expenditure. It is further submitted that the proportion of total revenue expenditure through governmental grant is expected to decline further in view of the Government policy to freeze the fund level and the expenses going up which are proposed to be met through Institute's own generated funds.

Thus, it is made clear that large portion of the expenditure of the respondent Institute is being made from internally generated funds by the Institute itself, and it is not entirely dependent on government funds.

##. It is also pointed out in the affidavit that there is nothing like monopoly in the activity carried on by IIMA. There are number of other Institutes imparting education in the same discipline, and there is no bar or

ban to impart education in similar disciplines by any other Institute. Mr. Nanavati submitted that it is known that several colleges have started courses of Business Administration in view of the permission granted by the authorities to allow private educational institutes to impart education by charging higher fees. It is further pointed out in the affidavit that terms and policies on which the Institute is functioning are not laid down by the Central Government or State Government and the appellant Institute is not required to get its policies and terms approved by any of the aforesaid agencies before they are implemented. It is further pointed out that the Government does not exercise control over the day to day functioning of the respondent Institute. However, it is stated that the Government is appointing the Chairman of the Board but the Chairman does not enjoy any executive powers in running of the Institute's affairs but only presides over the Board. It is further stated in the affidavit that the executive powers are vested with the Director of the Institute who is appointed by the Board with the concurrence of the Government of India and Government of Gujarat. It is further stated that the Central Government also nominates four members on the Board which has a total strength of 25. Thus, it is submitted that the Institute is not funded by the Government and the Institute is not required to take permission of the Government before taking money from anyone as it is in the case of Indian Statistical Institute (AIR 1984 SC 363). In view of the fact that the Executive powers are vested with the Director of the Institute and further that only 4 members of the Board are nominated by the Government out of the total strength of 25, it cannot be said that the Government has control over the Institute. The Institute was never attached to Government of India or the Government of Gujarat. Thus the case is clearly distinguishable.

##. On behalf of the Institute, it is also submitted that the functions of the Institute are not such which can be said to be closely connected with governmental functions. It is not engaged in carrying out any work which can be said to be a function of the Government. The Institute is engaged in training and imparting education in management discipline. The areas and syllabi of such education and research activities are decided entirely by the Institute and is not subject to any governmental scrutiny. The activities carried out by the Institute are not governmental functions which are normally carried out by any department of the Government, and the Institute is not engaged in functions which were

earlier carried on by Government and thereafter were transferred to the Institute.

##. The respondent No.1 in his affidavit filed in Spl. C.A. No. 77/1993 has stated in paragraph 6 that a duty is cast upon the State to make effective provisions for securing education for the citizens of India. He has further stated that keeping in view the said directive principles, the government of India in order to establish excellent facility for education in management, established the present Institute at Ahmedabad, and other Institutes at Bangalore, Calcutta and Lucknow. The respondent has further stated that the land for the campus of the Institute was donated by the Government of Gujarat and further expenses for construction of building and infrastructure were borne by the Government of India. He has further stated that in the report for the year 1991-92, it is clear that out of the Government grant of Rs.4,26,00,000/- the Institute has expended Rs.3,25,89,000/-, and thus there is balance of Rs.27,00,000/-. Thus, according to the respondent No.1 , the entire expenditure is borne by the Government.

##. In view of the aforesaid averments made on oath by the respondent No.1 , the Institute has filed an affidavit pointing out that in the year 1991-92, the only grant received by the Institute from the Central Government was to the tune of 41.5% (which does not include other grants received from Government and non-governmental sources for sponsoring certain projects and programmes). It is further pointed out that in the year 1992-93, the grant is reduced below 40% against the projected expenditure. The quantum of unutilised grant carried forward is also stated in this paragraph, which is to the tune of Rs.42,700/only. It is submitted that the respondent No.1 , without verifying the proper records has ventured to make statements only with a malafide intention to mislead the Court and the appellant herein demanded that the petitioner be put to the strict proof thereof. Mr. Nanavati further submitted that today, the grant has been further reduced and the Institute is not dependent on the Government funds.

##. In the affidavit filed in Spl. C.A. No. 77/1993 by A.K. Dua, Chief Administrative Officer on behalf of the present appellant, it is pointed out that at the time of filing of the affidavit, the revenue grant of the Government of India to the Institute was less than 35% of annual revenue expense of the Indian Institute of Management Ahmedabad, and no grant is received from the Government of Gujarat. It is further stated that the

Institute has full autonomy in teaching, training, research and consultancy assignments, which are the main activities of the Institute. It is further stated that the Institute also seeks donations and endowments and autonomously fixes tuition, research, consultancy, management training fees etc. as per the decision taken by the Board, Director and Board level and faculty committees without interference of the Government. Government permission is not required or sought for appointing or promoting of any members of the faculty or the member of staff. It is further stated that the Government exercises virtually no control over the day-to-day functioning of the Institute. It is further stated that IIMA has no share capital and Government bears only about one third of revenue expenses of the Institute. It is further stated that IIMA has no monopoly status as there are over 100 management Institutes in the country - mostly private. It is further pointed out that the management education is not a fundamental right of the citizens. It is further stated that the Institute was not founded by the transfer of any government department. The Institute is not providing services which are of public importance such as security, law and order, civil amenities, primary education etc., and education, research, training, consulting etc. are not obligatory functions of the State.

##. Diverting the State fund for such activities is one thing, but to say that the State is under obligation to impart management studies, research etc. is another thing.

##. The respondent No.1 has come out with a case that in case of publication relating to consultancy work (in Centre for Management in Agriculture), which is the respondent No.1's primary area at IIMA, officially approved project outputs are published by the Institute itself on certain conditions. He has further come out with a case that there are 16 books to his credit and IIMA is the beneficiary of the royalties of these publications. It is the case of the respondent No.1 herein that the book in question is entirely outside the scope of his employment, and the Institute is not concerned with the quality, contents or otherwise of the book published by him. In reply, it is contended on behalf of the Institute that CMA is a part of IIMA and is funded either through the Institute or by the Institute. It is further stated that the publication of these research project reports is done by IIMA; To make this a financially viable proposition, IIMA buys back from

publisher 150 copies. Therefore, it is stated that the authorship of such publications emanating from such research projects is vested with the IIMA and the royalty also comes to the IIMA. Thus, it is also a source of income of the Institute.

##. IIMA has framed its own rules.Reading the nature of composition, it is clear that four members of the general body of the Society are to be elected for two years by the members of the Society who had contributed a sum of atleast Rs.50,000/- each from amongst themselves. Four persons are to be nominated by the Central Government in consultation with the State Government to represent Commerce, Industry, Labour and other interests. There is also one representative each from All India Management Association and National Productivity Council of India. Two professors of the Institute are to be nominated by the Chairman of the Board for 2 years. Four members are co-opted by the Board of Governors as a whole, and the Director of the Institute is ex-officio member. It is submitted that in view of this composition, it cannot be said that there is any control of the Government on the IIMA.

##. The Rules also provide for functions and powers of the Board, which are eighteen in number. Reading the same, it is clear that none of the functions enumerated therein are governmental functions or similar to governmental function. In view of this also, it cannot be said that the Institute is discharging the function which is required to be discharged by the Government.

##. The Memorandum of Association of IIMA placed on record points out the object for which the Society was established. The object of the Society is to provide for training in management and related subjects for persons from industry, institutions and bodies and associations connected with industry and commerce and individuals in such a way so as to equip them thoroughly to practice the art and profession of management in which they have been trained or in appropriate cases, to instruct others in the practice of management. Even reading this, there is nothing to indicate that functions which are required to be discharged by the Government are either entrusted to IIMA or discharged by it. As stated earlier, Government is providing certain amount and therefore, with a view to have proper utilization of its funds, appoints certain persons. It is clear that there is no control over the management of the Institute on the day to day affairs of the Institute.

##. Mr. Nanavati submitted that the Institute imparts education in management studies and also undertakes research work etc. He submitted that the same cannot fall within the directive principles of State Policy. He submitted that under the directive principles of State Policy, Article 45 provides for free and compulsory education for children until they complete the age of fourteen years. As the Institute is imparting higher education to graduate students, it cannot be said that the Institute is imparting education in view of the directive policy of the Constitution as provided under Article 45 of the Constitution.

##. On behalf of the respondent No.1 , reliance is placed on the letter issued by the Government of India dated 28.1.1978 written by Assistant Educational Adviser, Government of India, Ministry of Education and Social Welfare, New Delhi to the Director of IIM Bangalore, at Annexure A-1 to the affidavit. It is pointed out in the said letter that the question whether the financial and service rules and regulations as mentioned in clause 3 (ii) and Rules 12 (XVI) of the Memorandum of Association of the Society, Indian Institute of Management, Bangalore, requires the approval of the Central Government or not was considered in consultation with the Ministry of Law, Justice & Company Affairs and it was conveyed that it would require approval of the Central Government. It is difficult to understand as to how this could have any relevance. Merely because certain rules involving financial implications require 'approval of the Central Government', it cannot be suggested that there is deep and pervasive control of the Government. Even in this letter, it is not suggested that the Board is prohibited from framing such rules, but all what is stated is that such rules framed by the Board would require approval of the Government. Hence, there is no merit in the submission advanced on behalf of the respondent No.1.

##. In this connection, it would be also relevant to refer to certain clauses of the Rules framed by IIMA. Rule 12 (xvi) reads as under:

"12. Power and Functions of the Board.

Subject to the provision of the Memorandum, the Board shall have the powers:

xxx xxx xxx xxx xxx

(xv) to consider and pass such resolution on

the annual report, the annual accounts and the financial estimates of the Society or the Institute as it thinks fit, such annual report, annual accounts and financial estimates along with the resolutions passed thereon by the Board being submitted to the Central Government through the State Government.

(xvi). to make, adopt, amend, vary or rescind from time to time with the prior approval of the Central Government and the State Government. Bye-laws for the regulation of, and for any purpose connected with the management and administration of the affairs of the institute and for the furtherance of its objects;

Reading clause (xvi), it is clear that for amending the byelaws for the regulation of and for any purposes connected with the management and administration of the affairs of the Institute and for the furtherance of its object, approval is necessary. So far as Memorandum of Association is concerned, clause 3 (ii) is relevant, which reads as under:

(ii). to make Rules and Bye-laws for the conduct of the affairs of the Society and to add, to amend, vary or rescind them from time to time, with the approval of the Central and the State Government.

As stated hereinabove, prior approval of the Central and State Government is required only to make, adopt, amend, vary or rescind the byelaws connected with the management and administration of the affairs of the institute; For all types of changes, prior approval is not required. Therefore, there is no merit in the submission that for every aspect approval is required.

##. Our attention is drawn to the recent judgment of the Apex Court in the case of BALBIR KAUR vs. STEEL AUTHORITY OF INDIA LTD. reported in 2000 (6) SCC 493. Mr. Nanavati pointed out this decision with a view to canvass that Steel Authority of India Limited, is an 'authority' within the meaning of Art. 12 of the Constitution. He submitted that in paragraph 8, the Apex Court observed that :

"the employer being Steel Authority of India, admittedly an authority within the meaning of

Article 12 ...".

Hence, Mr. Nanavati submitted that the question that SAIL is an authority or not was not disputed before the Apex Court, but it was an 'admitted' position. He further submitted that as observed by the Apex Court in the case of CHANDER MOHAN KHANNA (supra), each case should be handled with care and caution. Hence, each case is to be decided on the facts and the Court has to find out whether the Institute will be covered under Article 12 of the Constitution or not, and whether it is amenable to the writ jurisdiction or not.

##. In the case of U.P. STATE CO-OP. LAND DEVELOPMENT BANK LTD. vs. CHANDRA BHAN DUBEY reported in AIR 1999 SC 753 (see para 11) it was for the State Government to constitute an authority or authorities for recruitment, training and disciplinary control of the employees of the co-operative Societies or a class of co-operative Society and may require such authority or authorities to frame Regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. The regulations were to be made subject to approval of the State Government and were to be published in the gazette after approval and would take effect from the date of publication. Regulations were published in the gazette in the manner prescribed and were made applicable with effect from the date of their publication in the gazette. The State Government, in exercise of powers conferred under section 30 of the Bank Act framed the rules known as UP Co-operative Development Bank Rules, 1971 for the service condition of the employees of the appellant Bank. Looking to the provisions of the Bank Act, there shall not be more than one State Land Development Bank for the whole state of Uttar Pradesh and the sole Bank is the appellant. It has thus exclusive jurisdiction for the whole of the State of Uttar Pradesh. The Court, referring to the provisions of the Bank Act, pointed out that Registrar of the Co-Operative Society for the State of Uttar Pradesh shall be the Trustee for the purpose of securing the fulfillment of the obligations of the State Land Development Bank to the holders of debentures issued by the Board of Directors. The powers and functions of the Trustee shall be governed by the provisions of the Bank Act and by the instrument of Trust executed between the appellant and the Trustee as modified or substituted from time to time by their mutual agreement and with the approval of the State Government. Under section 9 of the Bank Act, the State Government constitutes a Guarantee Fund on such terms and conditions as it may deem fit, for

the purpose of meeting losses that might arise on account of loans advanced by the Land Development Banks on the security of mortgages not being fully recovered due to such circumstances as may be prescribed. The appellant bank and the Land Development Banks shall contribute to such fund at such rates as may be prescribed. Under the Rules of the Bank the Guarantee Fund shall be maintained by the Finance Department of the State Government in Public accounts section of the State Accounts, and all contributions to the fund and interest earned from investment made from the Fund shall be credited direct to the Fund. The Apex Court, in view of these and other provisions pointed out that there is control of the State Government though it functions as a co-operative society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution.

##. The Apex Court further pointed out in paragraph 22 that the jurisdiction under Article 226 can be exercised only when body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy.

##. Learned counsel appearing for the appellant submitted before us that in the case of UNNI KRISHNAN vs. STATE OF A.P. reported in (1993) 1 SCC 645, the Apex Court considered the question whether recognition or affiliation makes an educational institution as instrumentality of the State. In paragraph 73a, the Apex Court pointed out the relevant test for considering the aspect. The Court considered the decision in the case of AJAY HASIA (supra) and RAMANNA DAYARAM SHETTY vs. INTERNATIONAL AIR PORT AUTHORITY (1979) 3 SCC 489. The Apex Court summarized the relevant tests gathered from the decision in the INTERNATIONAL AIRPORT AUTHORITY case as under:-

(1). One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government (SCC p.507, para 14).

(2). Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character (SCC

p.508, para15).

(3). It may be also a relevant factor . whether the Corporation enjoys monopoly status which is State conferred or State protected (SCC p.508, para 15).

(4). Existence or deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (SCC p.508, para 15).

(5). If the function of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government (SCC P.509, para 16).

(6). "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the Corporation being an instrumentality or agency of Government' (SCC p. 510, para 18).

The Apex Court pointed out that the same view has been taken by the Apex Court in a subsequent case of U.P. WAREHOUSING CORPORATION v. VIJAY NARAYAN VAJPAYEE reported in (1980) 3 SCC 459.

In paragraph 74 of UNNIKRISHNAN's case (supra), the Apex Court quoted the following portion from the judgment in the case of TEKRAJ VASANDI vs. UNION OF INDIA reported in (1988) 1 SCC 236:

"We have several cases of societies registered under Societies Registration Act which have been treated as 'State' but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the 'State' had been undertaken to be performed as a part of the Society's function. In a Welfare State, as has been pointed out on more than one occasion by this Court, government control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the

State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach reasonable conclusion. Having given our anxious consideration to the facts of this case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of 'other authorities' in Article 12 of the Constitution. We must say that ICPS is a case of its type - typical in many ways and the normal tests may perhaps not properly apply to test its character".

In paragraph 76, the Apex Court pointed out that:

"Applying these tests, we find it impossible to hold that a private educational institution either by recognition or affiliation to the University could ever be called an instrumentality of State. Recognition is for the purposes of conformity to the standards laid down by the State. Affiliation is with regard to the syllabi and the courses of study. Unless and until they are in accordance with the prescription of the University, degrees would not be conferred."

In the facts and circumstances of the instant case, it cannot be said that IIMA is an instrumentality of the State.

##. In the instant case, it is pointed out by Mr. Nanavati that the Institute is not run solely on the Government aid. The Government aid is not playing a major role in the control and maintenance of educational institution. He submitted that though the function of the Institute may be considered as a Public function in view of the fact that it is an educational institution, but as the staff is subject to the rules and regulations of the Institute itself, the University had no control over the regulations. The activities of the Institute are not at all supervised by the University. He submitted that therefore the dismissal of person employed in the Institute cannot get the colour of public duty. The University cannot take a decision with regard to the staff of the Institute, but it is the Institute that takes its own decisions. The service condition of the Institute are therefore, purely of a private character.

There is no superadded protection by the University decision creating a legal right-duty relationship between the staff and the management. If the case is with regard to admission of students in the Institute, the same will have to be considered in a different manner than the service condition of a staff member. As the educational institutions are discharging public duty insofar as imparting education is concerned, the Court may interfere, if the students are denied admissions contrary to the policy or arbitrarily but not otherwise. However, when the question is with regard to service conditions of a staff member or individual action taken against a person, it can be said to be a matter purely of a private character as it is between the individual and the Institute. With regard to imparting education or admission to the Institute, it can be said that it pertains to large number of students who are likely to be affected, and, therefore, that part of the duty can be said to be a public duty. It is in this background, according to Mr. Nanavati, in paragraph 77 of UNNI KRISHNAN's (supra) case, the Apex Court observed as under:-

> "As a sequel to this, an important question arises: what is the nature of functions discharged by these institutions? They discharge a public duty. If a student desired to acquire a degree, for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain the qualification. If, therefore, what is discharged by the educational institution is a public duty, that requires duty to act fairly. In such a case, it will be subject to Article 14. (emphasis by us)

##. Mr. Nanavati, learned counsel for the appellant submitted that a Division Bench of this Court in the case of MISC. MAZDOOR SABHA vs. STATE reported in 1992 (2) GLR 1065 considered the difference between 'public duty' and 'private duty'. It was a case where a Company terminated illegally services of all the employees without following the provisions of section 25.F, 25 FFA, 25.N and 25.0 of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act) and sec. 66 of the Bombay Shops and Establishment Act (hereinafter referred to as the Shops Act). The Court pointed out that in view of the provisions, the High Court can issue writ to any person, authority or Government and such writ or direction can be issued to them for enforcement of any of the fundamental rights covered by Part II or for any

other purpose. The Court examined the question whether the Company committed breach of public duty when the impugned notice was issued. The court pointed out that it was not the case of an individual termination of employment either on the ground of misconduct or on the ground of retrenchment as retrenchment presupposes that when the concern is going on, some working force as contra-distinguished from the entire working force, gets terminated from service. The Court pointed out:

"These would be individual disputes pertaining to one or two or number of workmen similarly situated as compared to their other colleagues who are still retained in service. So far as such grievances are concerned, even though employers may be covered by the sweep of Art. 226 (1) as being 'person', they may not be liable to be proceeded against under Art. 226 (1) as their actions would remain in the domain of private rights and obligations".

The Court expressed an opinion that the entire work force in the Company was dismissed without following the provisions of section 25.F, 25 FFA, 25.N and 25.0 of the ID Act and it cannot be said that the wholesale termination would still remain in the domain of private rights and obligation between the concerned workman on one hand and the employer on the other. The Court further observed that:

"But such wholesale termination contrary to these provisions would project a picture of violation of public duty as it affects the entire working force and their dependents"

##. Mr. Nanavati therefore submitted that in the instant case, the Institute being an autonomous body, it has taken action against the present respondent No.1 , and it cannot be said that the Court is required to examine the matter from the spectacle of public duty. He submitted that what is required to be examined in the instant case is: whether the services were dispensed with rightly or not, and for that, a specific forum is created, viz. the Civil Court or alternatively the Tribunal under the Gujarat University Act, and this Court need not, and cannot, examine that question in the facts and circumstances of the present case.

##. Mr. Nanavati drew our attention to the recent judgment of the Apex Court in the case of VST INDUSTRIES LTD. vs. VST INDUSTRIES WORKERS' UNION reported in 2001

(1) SCC 298 with a view to point out the nature of public duty which would attract the provisions contained in Article 226 of the Constitution. The Court examined the case of ANADI MUKTA In the case of ANADI MUKTA the petitioners were claiming only terminal benefit or arrears of the salary payable to them. In that background, the Court observed that if the rights are purely of private character, no mandamus could be issued and also if the management of the College was purely a private body with no public duty, mandamus would not lie. In that case the respondent was managing an affiliated college to which public money was paid as Government aid which played a major role in the control, maintenance and working of educational institution. The aided institution, it was noticed, like government institutions discharge public function by way of imparting of education to students. They were subject to rules and regulations of the affiliating university and their activities were closely supervised by the University authorities. The Apex Court, in the circumstances, held that employment in such Institution is not devoid of any public character inasmuch as the service condition of the academic staff was controlled by the University particularly in regard to pay scales and the protection by University decisions creating a legal right or duty relationship between the staff and the management. The Court pointed out that the forum of the body concerned is not very much relevant but what is relevant is the nature of the duty imposed on that body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party; no matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.

##. In paragraph 7 of the judgment in the case of VST INDUSTRIES (supra), the Apex Court also considered de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., and it is noticed that not all the activities of the private bodies are subject to private law, e.g., the activities by the private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, atleast in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose

custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarized the position with the following propositions:

(1). The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2). The principles of judicial review prima facie govern the activities of bodies performing public functions.

(3). However, not all decisions taken by bodies in the course of their public functions are the suject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a). Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b). Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime and not judicial review, will normally govern the dispute."

##. In its judgment in the case of VST INDUSTRIES (supra) the Apex Court observed that:

"In ANADI MUKTA case, the Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked."

However, in case of VST INDUSTRIES, (Supra) the Apex Court observed that the firm is engaged in the manufacture and sale of cigarettes, which will not involve any public function. However, incidental to that activity there is an obligation under Section 46 of the Factories Act, 1948 to set up a canteen where the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman for providing better facilities to workman to discharge their duties properly and to maintain their own health or welfare. In other words, it was only a labour welfare device for the benefit of its workforce unlike a provision where the Pollution Control Act makes it obligatory even on a private company not to discharge certain effluents. In such cases, public duty is with reference to the public in general and not specifically to any person or group of person. Further, the damage that would be caused in not observing pollution norms would be immense. If merely what can be considered a part of the conditions of service of a workman is violated then we do not think there is any reason to hold that such activity will amount to public duty. The Apex Court held that the High Court fell into error in holding that VST Industries is amenable to writ jurisdiction.

##. The Division Bench of this Court in the case of MISC. MAZDOOR SABHA (supra) pointed out as under in paragraph 12 of the judgment:

"In such type of case, the question arises whether violation of statutory provisions which has effected the wholesale uprooting of the entire working force, contrary to the obligations flowing from Secs. 25FFA and 25FFF can be considered to be within the domain of private duty or public duty. If these statutory obligations cast on the company like respondent No.3 are in the domain of private duty and not public duty, then obviously the petitioner's petition would not lie and the remedy will be by way of proceedings under the Act. In our view

when the entire working force in a concern is dispensed with without following the statutory provisions of Secs. 25FFA and 25FFF, it cannot be said that such wholesale termination would still remain in the domain of private rights and obligations between the concerned workmen on the one hand and the employer on the other".

##. Mr. Nanavati, learned counsel for the appellant relied on the decision of the Apex Court in the case of COMMON CAUSE, A REGISTERED SOCIETY vs. UNION OF INDIA reported (1999) 6 SCC 667. He submitted that this is a matter not pertaining to public law, and, therefore, the impugned judgment must be quashed and set aside. The Apex Court pointed out that (see. pg. 701 para 40) essentially under public law, it is the dispute between citizen or group of citizens on one hand and the State or some bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies from acting in an arbitrary manner or in violation of that rule. In paragraph 41, the Apex Court held as under:

"41. In a broad sense, therefore, it may be said that those branches of law which deal with the rights/duties and privileges of the public authorities and their relationship with the individual citizens of the State pertain to 'public law', such as constitutional and administrative law, in contradistinction to 'private law' fields which are those branches of law which deal with the rights and liabilities of private individuals in relation to one another."

In paragraph 59, the Apex Court held as under:

"If the proceedings were directed to challenge the decision of a public law nature, and were not initiated for enforcement of private rights, an application for judicial review was the only permissible course."

In paragraph 62, the Apex Court held as under:

"Thus, judicial review would lie against persons and bodies carrying out public functions. But it would not lie against a person or body carrying out private law and not public law functions. In such cases, the proper remedy is by way of action for a declaration and, if necessary, an

injunction."

##. Mr. Nanavati, in view of the decision in the case of MISC. MAZDOOR SABHA (supra) and in the case of V.S.T. INDUSTRIES (supra) has rightly submitted that in the instant case, as the respondent No.1 has alleged the breach of service condition, there would be no justification to hold that it would amount to public duty. Therefore, this Court will have no jurisdiction to decide the issue.

##. Mr. Nanavati, learned counsel for the appellant submitted, and in our opinion rightly, that if there is a breach of pollution control norms, the general public would suffer, and therefore the Court may take action under Article 226 of the Constitution of India against a Company, but when the question involved is a dispute between an individual and the same Company, it cannot be said to be a question of public duty. He submitted that, therefore, in the instant case, it cannot be said that the question involved is of public duty requiring this Court to examine the matter. He emphasised that the Institute is an autonomous body, and if an action is taken against an individual member of the staff, it cannot be said that the said action has the colour of performing public duty. Mr. Nanavati further submitted that the question of public duty is to be examined. Whether the question is pertaining to 'statutory public duty' or is in the realm of 'public duty' is also required to be examined. He further submitted that the instant case is not in the realm of public duty but in the realm of private duty.

##. In UNNIKRISHNAN's case (supra) the question was whether levy of capitation fee is violative of fundamental right or not?. Mr. Nanavati submitted that the observations made is in respect of affiliated college and writ would lie for enforcement of that duty which is in the nature of public duty as distinguished from other duties which the Institute is required to perform. It is submitted that every duty or every function which is performed by the Institute is not public duty. He submitted that on analysis of the decided case, each and every function of an autonomous body, discharging its functions independently, may not fall within the ambit of public duty. The Apex Court pointed out that discharge of public duty is in relation to students who desire to acquire a degree, for example: in medicine, where he will have to route through the medical college which are the instruments to attain the qualification. What is

conveyed is that imparting education by the educational institute is public duty and therefore the Institute is required to act fairly in discharge of that public duty failing which for that part of the duty, it will be subject to challenge for violation of rights under Article 14. Mr. Nanavati submitted that it is in this context that the Apex Court has pointed out that no one shall deny equality before the law or equal protection of the laws. He submitted that this is with reference to granting admission to the students treating them equally but it has nothing to do with the private duty. Mr. Nanavati submitted that the Institute is neither recognized nor affiliated with the University. Syllabi is also not to be approved by the University. IIMA takes the examination and grants diploma. There are several Institute engaged in imparting education similar to which the Institute is imparting. In the absence of any control by the State or the University, it cannot be said that the Institute is amenable to the writ jurisdiction.

##. The Apex Court in the case of UNNI KRISHNAN (supra), in paragraph 80 considered the case of R vs. BBC reported in (1983) 1 All ER 241 wherein it was held:

"Paragraph (2) of Rule 1 of Order 53 does not strictly confine applications for judicial review to cases where an order for mandamus, prohibition or certiorari could be granted. It merely requires that the court should have regard to the nature of the matter in respect of which such relief may be granted. However, although applications for judicial review are not confined to those cases where relief could be granted by way of prerogative order, I regard the wording of Order 53, Rule 1(2) and sub-section (2) of section 31 of the Supreme Court Act 1981 as making it clear that the application for judicial review is confined to reviewing activities of a public nature as opposed to those of a purely private or domestic character. The disciplinary appeal procedure set up by the BBC depends purely on the contract of employment between the applicant and the BBC, and therefore, it is a procedure of a purely private or domestic character.

(emphasis supplied by Supreme Court).

In paragraphs 194 and 195 of UNNIKRISHANAN's case, the Apex Court held as under:

"194. The hard reality that emerges is that

private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State, it has no monopoly therein, Private Educational Institutions including minority educational institutions - too have a role to play.

195. Private educational institutions may be aided as well as un-aided. Aid given by the Government may be cent per cent or partial. So far as aided institutions are concerned, it is evident, they have to abide by all the rules and regulations as may be framed by the Government and/or recognising/affiliating authorities in the matter of recruitment of teachers and staff, their conditions of service, syllabus, standard of teaching and so on. In particular, in the matter of admission of students, they have to follow the rule of merit and merit alone - subject to any reservations made under Article 15. They shall not be entitled to charge any fees higher than what is charged in Governmental institutions for similar courses. These are and shall be understood to be the conditions of grant of aid. The reason is simple: public funds, when given as grant - and not as loan - carry the public character wherever they go; public funds cannot be donated for private purposes. The element of public character necessarily means a fair conduct in all respect consistent with the constitutional mandate of Articles 14 and 15. .... "

##. Mr. Nanavati, learned counsel submitted that thus it is very clear that even in medical colleges, the element of public character is pointed out by the Apex Court and has pointed out that the element of public character necessarily means that a fair conduct in all respect consistent with the constitutional mandate of Article 14 and 15. He submitted that it has no reference to Article 12 of the Constitution insofar as educational institutes are concerned. Mr. Nanavati submitted that the Apex Court has given direction in paragraph 226 in the case of UNNIKRISHNAN, which, if read, it becomes clear that the right of education flows from Article 21 which is not an absolute right. Its contents and

parameters have to be determined in the light of Articles 45 and 41. Obligations created by Articles 41, 45 and 46 of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognising and/or granting affiliation to private educational institutions. It is also pointed out as to how private educational institutions shall charge fees. In view of the nature of the direction, Mr. Nanavati submitted that institutions -whether aided by public funds or not, when engaged in education is required to act fairly.

##. Mr. Nanavati, learned counsel for the appellant, in view of the aforesaid decision submitted before us that the matter is pertaining to pure and simple 'private duty' and not 'public duty'. He submitted that an Institute or a Company may be subjected to follow several laws; In a given case non-fulfilling the provisions of a particular law may mean breach of public duty and the Court may exercise the jurisdiction, but in another set of circumstances, the Court may not exercise its jurisdiction if public duty is not involved, and in such cases, the remedy would be by way of a suit or an application before appropriate Tribunal. The Apex Court in paragraph 63 of the judgment (COMMON CAUSE) observed as under:

> "There is also a self-imposed restriction on the exercise of power of judicial review which is to the effect that the courts would not normally grant judicial review where there is available another avenue of appeal or remedy. In R.V. Epping & Harlow General Commrs., the Court observed:
>
> "It is a cardinal principle that, save in the most exceptional circumstances, (the jurisdiction to grant judicial review) will not be exercised where other remedies (are) available and have not been used."

###. A Division Bench of this Court in the case of GUJARAT HEAVY CHEMICALS LTD. vs. ASSISTANT COLLECTOR OF CUSTOMS reported in 1990 (1) GLR 346 has pointed that extra ordinary jurisdiction under Article 226 and 227 cannot be exercised ordinarily where other remedy is available. The Court pointed out that it can be invoked provided no other remedy is available. If the remedy under ordinary law is little onerous, is not a ground for invoking the extra ordinary jurisdiction of the High Court. In paragraphs 9, 10 and 11, the Division Bench

observed as under:

"9. Look at the approach adopted by the Supreme Court in yet another case, (P.N. Kumar v. Municipal Corporation of Delhi, 1987 (4) SCC 609). It was a petition under Art. 32 of the Constitution of India. In this case a petition under Art. 226 of the Constitution could also be filed before the High Court. Therefore, the Supreme Court declined to exercise its power under Art. 32 of the Constitution of India for ten different reasons. All of them are important and relevant. But only two of them (Nos. 7 and 10) be mentioned here to emphasize the point:

(7). This Court has no time today even to dispose of cases which have to be decided by it alone and by no other authority. Large number of cases are pending from 10 to 15 years. Even if no new case is filed in this Court hereafter, with the present strength of Judges it may take more than 15 years to dispose of all the pending cases.

(10). Lastly, the time saved by this Court by not entertaining the cases which may be filed before the High Courts can be utilised to dispose of old matters in which parties are crying for relief.

In the context, if read with suitable modifications, message conveyed equally applied to the High Courts.

10. It needs to be realised, and emphasized too that the powers conferred on this High Court under ARt. 226/227 of the Constitution of India are in the nature of extraordinary jurisdiction. Therefore, whenever any other statutory authority can exercise power in a particular subject matter, ordinarily this High Court should not exercise this extraordinary power. The ambit of the powers under Art. 226 of the Constitution of India is very wide and that is the reason why this Court should exercise utmost restraint in exercising the same. If such restraint is not exercised, the result would be (and in fact it has been) very much disturbing. This High Court has been, and will continue to be flooded with all type of work which can be done by almost all

other statutory authorities, over and above the work which this High Court alone can do. The result is that the work which this Court alone can do is suffering.

(i) Appeals from Orders;

(ii) Civil Revision Applications under Sec. 115 of C.P. Code and under other relevant provisions of different statutes;

(iii) First Appeals and Second Appeals under C.P. Code and under the provisions of different statutes.

(iv) Criminal Appeals.

(v) Criminal Revision Applications and Criminal Misc. Applications.

(vi). Petitions for writ or habeas corpus, in preventive detention matters and other cases;

(vii) Petitions for initiating contempt of court alleging that the orders passed by appropriate Tribunal/Authority have not been complied with; and,

(viii) Other petitions affecting the fundamental rights and other civil rights of citizens.

(ix) Company matters; and

(x) References under Income Tax Act and Sales Tax Act and other taxation laws.

can be decided by this High Court and only by this High Court and not by other statutory authorities.

11. Hundreds of accused are lanquishing in jail and awaiting their turn for their matters being heard for last about four to five years. (As on today, about 8 to 9 years) Several persons detained under the preventive detention laws run out their period of detention without their matters being heard on merits. Even applications for taking action for contempt are awaiting their

turn for a period of about two to three years, if not more. Many first appeals and second appeals and other civil matters are waiting in que for a period of five to ten years. The litigants who are directly involved or affected in these matters or who have direct or indirect interest or concern in such matters may legitimately claim and request that unless the High Court decides the case which the High Court alone can decide, it is the constitutional obligation of the High Court to refrain itself from entertaining other matters which can be decided by other statutory authorities".

Hence it it settled position of law that where alternative remedy is available, the High Court should not exercise its extraordinary jurisdiction under Art. 226/227 of the Constitution of India.

###. Another question raised before this Court is: Whether this Court would be justified in dismissing the Special Civil Application after the learned Single Judge allowed it? The Division Bench of this Court in the case of K.S. JOY (supra) observed that once the petition is entertained and heard by the High Court on merits, it would not be proper to relegate the party to an alternative remedy. Before the learned Single Judge, in the instant case, the question with regard to maintainability of the petition was raised, and therefore, the appellant is entitled to argue the same before this Court. The Apex Court, in the case of COMMON CAUSE (supra) has further pointed out that self-imposed restriction on the exercise of power of judicial review and has pointed out that save in the most exceptional circumstances, the jurisdiction to grant judicial review will not be exercised like other remedies if other remedies are available and have not been used.

###. The Apex Court in the case of U.P. STATE CO-OP LAND DEVELOPMENT (supra) pointed out as under in paragraph 26:

"But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or

when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226."

###. Mr. Nanavati, learned counsel submitted that in the case of SHEELA DEVI vs. JASPAL SINGH reported in (1999) 1 SCC 209, the Apex Court has taken the view that when alternative remedy is available the High Court should not entertain the petition. The Apex Court set aside the order of the High Court with a liberty to the respondent to avail of the alternate remedy of revision, and therefore, he submitted that in the instant case also, the respondent No.1 having the alternative remedy available, he may approach that Forum. He submitted that it is not correct position of law to state that once the party has approached the High Court and the High Court has entertained the petition, the petitioner should not be relegated to the appropriate forum. In fact, in our view, when it is pointed out that alternative remedy is available under the law, it is the duty of the Court not to exercise its writ jurisdiction except in rarest of the rare cases. Otherwise, as pointed out by the the Division Bench in the case of GUJARAT HEAVY CHEMICALS LTD (supra) litigants would straightway approach this Court and the Court would not be in a position to decide other matters. In the instant case, alternative remedy is available and the same question has not been examined by the Division Bench, in the case of K.S. JOY (supra). Learned Single Judge proceeded to examine the matter following the decision in the case of K.S. JOY (supra). This Court, therefore, should decide the question when alternative remedy is available, the petitioner should be relegated to that forum or not. In our view, in view of the judgment of the Division Bench in the case of GUJARAT HEAVY CHEMICALS LTD (supra) and the other decision of the Apex Court and this Court discussed in this judgment, when alternative remedy is available, the petitioner must be asked to approach that forum.

###. Mr. Nanavati, learned counsel submitted that in the instant case, it is a matter of private contract, and, therefore, party aggrieved has to approach the appropriate forum. In case of VAISH DEGREE COLLEGE v. LAKSHMI NARAIN reported in (1976) 2 SCC 58, the College was registered under the Co-Operative Societies Act and was an Institution for imparting education. The affairs of the college were maintained by the Executive Committee of the College. The college was affiliated to the Agra

University and as a consequence thereof the College agreed to be governed by the provisions of Agra University Act and the statutes and the ordinances made thereunder. With the establishment of Meerut University, the college got affiliated to the Meerut University. The respondent was appointed as Principal of the college on permanent basis w.e.f. July 1, 1964 and his appointment as Principal was formally approved by the Vice Chancellor of Agra University. Two years later, difference arose between the Executive Committee of the College and the respondent resulting in allegations and counter allegations and culminating in a notice served by the Executive Committee directing the respondent not to discharge his duties as Principal. Ultimately, it culminated in the termination of the respondent. In paragraph 18 the Court pointed out as under:

"On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsist and the employee, even after having been removed from service, can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions: (i). where a public servant is sought to be removed from service in contravention of the provision of article 311 of the Constitution of India; (ii). where a worker is sought to be reinstated on being dismissed under the industrial law; and, (iii). where a statutory body acts in breach or violation of the mandatory provisions of the statute.

In this matter, the Apex Court considered the case of Sabhajit Tewary v/s Union of India reported in 1975 (1) SCC 485 wherein the Apex Court pointed out thus:

"The Society does not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation or Industrial Finance Corporation. It is a Society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the governing bodies or that the Government may terminate the membership will not establish anything more than the fact that the government takes special care that the promotion, guidance and co-operation of the

scientific and industrial research, the institution and financing of specific researches establishment or development and assistance to special institutions or departments of the existing institutions for specific study or problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a reasonable manner."

The Apex Court also pointed that the similar view was taken in Kumari Regina vs. St. Aloysius High Elementary School reported in AIR 1971 SC 1924. The Apex Court observed thus:

"But it cannot also be gainsaid that as the Government has the power to admit schools to recognition and grants-in-aid, it can, de hors the Act, lay down conditions under which it would grant recognition and aid. To achieve uniformity and certainty in the exercise of such executive power and to avoid discrimination, the government would have to frame rule, which, however, would be in the form of administrative instructions to its officers dealing with the matter of recognition and aid. If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be condition precedent to obtaining recognition and aid and that a breach or non compliance of such conditions would entail either the denial or withdrawal of recognition of aid. The management of a school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the government would grant recognition and aid and the government can enforce these rules upon the management. But the enforcement of such rules is a matter between the government and the management, and a third party such as a teacher aggrieved by some order of the management cannot derive from the rules any enforceable right against the management on the ground of breach or non-compliance of any of the rules".

In paragraph 11, after considering the decision in the case of J. Tiwari v. Jwala Devi Vidya Mandir reported in AIR 1981 SC 122, the Court observed that in

this case, the Apex Court repelled the contention and held that the Vidya Mandir, inspite of being governed by the University regulations and the provisions of the Education Code framed by the State Government and also being aided by educational grants, still constituted only a private institution and as such Smt. J. Tiwari would be entitled to a decree for damages, if her dismissal was wrongful and not to an order of reinstatement or a declaration that notwithstanding the termination of her services she continued to be in service.

###. In the case of DR. C.A. SHAH VS. GUJARAT CANCER & RESEARCH INSTITUTE reported in 1992 (1) GLR 687, a Division Bench of this Court held that educational or medical institutions founded by Societies or Charitable Trusts are not State within the meaning of Art. 12 though such bodies receive grants from the Government. The Court further held that the fact that some control is exercised by the State Government by virtue of special statutes does not alter the situation. The Division Bench further held that the decision of AJAY HASIA (supra) nowhere lays down that the school run by the public trust is 'State'' or other authority as envisaged under Art. 12 of the Constitution. It only lays down that if the authority is required to act in pursuance of the statutory provisions then it is amenable to writ jurisdiction under Art. 226 or Art. 227 of the Constitution of India, as the case may be. The Division Bench, in paragraph 15 further held that an employee in a privately managed college which is being aided by the Educational grants would only be entitled to a decree for damages if the dismissal order was wrongful and not to an order of reinstatement or a declaration that notwithstanding the termination of services he or she continues to be in service. The Division Bench considered the case of Ahmedabad Kelavani Trust v/s. State reported in 1978 GLR 671 wherein this Court examined the question whether affiliated college is either a statutory body or one or the other authority as contemplated by Art. 12 of the Constitution or a public body or not. The Division Bench, after relying on judgments of the Apex Court, held that Trust or Society which has established a College or an Institution would not be 'other authority' as envisaged by Art. 12 of the Constitution by holding that such College or Institution cannot be held to be Agency or instrumentality of the Government for carrying on certain functions and activities which State was bound to carry on. The Division Bench also held that a private college cannot be said to be a public authority. The Division Bench emphasized the following observations made in Ahmedabad

Kelavani Trust's case:

"At any rate eventhough it is operating in the field of education, which State could have done and conceding that State gives grant to it, yet it is difficult for us to say that College is agency or instrumentality of the Government for carrying on certain functions and activities which State was bound to carry on."

The Division Bench, in case of Dr. C.A. SHAH (Supra) after considering the decisions in the case of SUKHDEV SINGH v. BHAGAM RAM, AIR 1975 SC 1331, MALLOCH V. ABERDEEN CORPORATION - 1971 (2) AER 1278, MANMOHAN SINGH V. COMMR. U.T. CHANDIGARH - AIR 1985 SC 364, DIPAK KUMAR V. DIRECTOR OF PUBLIC INSTRUCTION - AIR 1987 SC 1422 wherein the decision of VAISH COLLEGE VS. LAKSHMI NARAIN -1976 (2) SCR 1066 : AIR 1976 SC 888 was considered, held as under in paragraph 15:

"From the aforesaid decision, it can be held that an employee in a privately managed College which is being aided by the educational grants would only be entitled to a decree for damages if the dismissal order was wrongful and not to an order of reinstatement or a declaration that notwithstanding the termination of services he or she continues to be in service."

In the case of DR.C.A. SHAH (supra), the Division Bench considered the case of TOKRAJ v. UNION OF INDIA -AIR 1988 SC 469, SHRI ANADI MUKTA (supra) DEEPAK KUMAR BISWAS (supra), and pointed out as under in paragraph 17:

"After considering all the relevant decisions the Court in paragraph 17 held that these authorities say that a College owned by a private body, though recognized by or affiliated to a Statutory University will not become a statutory body since it is not created by or under a statute. And the dismissed employee of such institution cannot get specific performance of service of contract."

In view of the law laid down by several decisions, this Court cannot take a contrary view than what has already been taken and followed since number of years. In our view, merely because grant is given, it would not cloth this Court with powers to exercise its jurisdiction under section 226 of the Constitution of

India when alternative remedy is available.

###. Learned counsel for the respondent No.1 submitted that there no opportunity of hearing was given to the respondent No.1 i.e. to say that there was no notice containing the charges were served or the respondent No.1 was not called upon as to why the penalty should not be imposed. It is also submitted on behalf of the respondent No.1 that the Committee was constituted behind his back.

###. It is required to be noted that the Committee was constituted on 6th July 1992. The respondent No.1 by a letter dated 6.7.1992 submitted relevant material. On 11.8.1992, personal hearing was given to the respondent No.1. On 17.8.1992 report of the committee was drawn and was supplied to the petitioner. On 11.9.1992 in response to the Committee appointed to inquire into the allegation of plagiarism a note was submitted by the respondent No.1 to the committee pointing out that he was a co-author of the book in question and was responsible for certain chapters only. For the first time, the respondent No.1 stated these facts after the report of the committee. In response to this, the Committee observed that the information on allocation of chapter was not available in the book. The respondent No.1 had not given this information in his letter dated 6.7.1992 to the Director. The respondent No.1 did not provide this information even when he met the committee on 11th August 1992. Thus, it seems that for the first time he came out with the case that chapters were not written by him but were written by co-authors. The note is prepared in response to the Committee's action. The respondent No.1 also wrote letters on 15.10.1992 and 16.10.1992 to the Director stating that he had no access to the materials relied and referred to by the Committee.

###. The respondent No.1 was consulted before appointing the committee as it is clear from the material placed before the Court. Not only that, one member of the Committee was a member of the choice of the respondent No.1 , and therefore, it is not proper on the part of the respondent No.1 to throw mud at the Institute.

###. It is further pointed out by the appellant that the order passed by the management is not an order by way of punishment but it is an order of removal simpliciter on account of loss of confidence or discharge simpliciter. The order is produced on record at page 33, which is dated 5th January 1993. Reading the same, it is clear that the Institute was of the opinion that it is not in

the interest of the Institute to continue the respondent No.1 in service. His services were therefore terminated with immediate effect. In lieu of three months notice, payment of three months salary was enclosed with the letter through banker's pay order and the details thereof are also mentioned in the letter. The management has thus removed the respondent No.1 in the interest of the Institute. There is no reference to plagiarism though it is found that the respondent No.1 had indulged in plagiarism. The Apex Court in the case of WORKMEN OF SUDDER OFFICE, CINNAMARA v. MANAGEMENT reported in 1971 (2) LLJ 620 had an occasion to consider the case of termination simpliciter or with malafides. In the WORKMEN OF SUDDER OFFICE case, learned counsel pointed out the decision of the Apex Court in the case of ASSAM OIL COMPANY vs. ITS WORKMEN 1960 (1) LLJ 587, RUBY GENERAL INSURANCE CO. LTD. vs. CHOPRA (PP) 1970 (1) LLJ 63, and HINDUSTAN STEELS LTD., ROURKELA vs. ROY (A.K.) & ORS. 1970 (1) LLJ 228 in support of his propositions that on examination of all the circumstances, if the apprehension of the employer that he has lost trust and confidence in the employee and as such it is not in the interest of the employer to retain the employee in its service is accepted as genuine and honest, a case should be considered to have properly made out against reinstatement and that it is a case when compensation would meet the ends of justice. In paragraph 25 of the said case, the Court pointed out that :

"Though primafacie it may appear that the management was charging the workman in respect of matter which may be a misconduct under the standing orders, ultimately we are satisfied that the management has passed the order of termination simpliciter and the order does not amount to one of dismissal as and by way of punishment".

There was some sort of investigation. However, the management has not chosen to dismiss the workman on the ground that he is guilty of one or the other misconduct. The order finally says that in the interest of the Company it has been decided to terminate the services of the workman under the relevant clause. The Court pointed out that: (see. pg.628 para 26 last 4 lines)

"If it is really a case of dismissal of an employee for misconduct, he would not be entitled to payment of various items referred to in the

order dated April 20, 1960, particularly one month's pay in lieu of notice, the employer's contribution to the provident fund as well as the earned leave salary amount. The fact that the management paid all those amounts clearly shows that the action taken by the management cannot be said to be one by way of dismissal and that it is a case of termination of service simpliciter."

###. In the instant case, the proceedings were initiated as letter was received from a student about plagiarism. The letter is on the record. The Committee was constituted for making an inquiry. The respondent No.1 has also appointed a member in the Committee who was a person of his choice. The committee examined the book to arrive at a conclusion whether the act of plagiarism is proved or not. All the reports are on the record. As indicated earlier, personal hearing was given and his comments were also called for in connection with the report. It may be noted that in the meeting there was discussion for a different kind of punishment. However, later on the respondent No.1 resiled from what he stated. That part is not relevant in the instant case. In the educational institution, if the teachers are indulging in the act of plagiarism, it will have an adverse impact on the students. Ultimately, after giving an opportunity to the respondent No.1 , a decision was taken, which is reflected in Annexure 'A' at page 33. The Apex Court in the case of U.P. STATE CO-OP. LAND case (supra), in paragraph 17 pointed out that:

"An inquiry proceedings is not held as if it is a trial in a criminal case or as if it is a civil suit. Rules of natural justice require that a party against whom an allegation is being inquired into should be given a hearing and not condemned unheard. As to what are the rules of natural justice to be followed in a particular case would depend upon the circumstances in each case and must also depend on the provisions of law under which the charges are being inquired into in the disciplinary proceedings. In Nagendra Nath Bora vs. Commissioner of Hills Division and Appeals, Assam AIR 1958 SC 398 at pg. 409 the Apex Court held that "the rules of natural justice vary with varying constitution of statutory bodies and the rules prescribed by the Act under which they function : and the question whether or not any rule of natural justice had been contravened should be decided not under any pre-conceived notions, but in the light of the

statutory rules and provisions." The respondents were apprised of the evidence against each of them and given opportunity of being heard in person and also to produce evidence in defence. Nothing more was required on the part of the Inquiry Officer. Procedure after the receipt of the reports of the Inquiry Officer was followed as prescribed."

In the circumstances, the Apex Court pointed out that the High Court fell in error in recording a finding that rules of natural justice or the regulations and service rules which are statutory in nature have not been followed.

###. Suffice it to say that in the instant case, the rule of natural justice has been followed and, therefore, there is no question that the Inquiry was held behind the back of the respondent No.1 or no opportunity was given to him. In view of the record, we find no substance in the arguments made on behalf of the respondent No.1.

###. It is also required to be noted that the institute found that it is not in the interest of the institute to continue the respondent No.1 anymore, and, therefore, made an order of dismissal simpliciter, which was conveyed to the respondent No.1. It is also clear that amount of three months salary in lieu of notice was also forwarded by Banker's draft. Thus, we find no merits in the contention.

###. Chapter VI of the Gujarat University Act provides for affiliation, recognition and approval. Section 33 refers to affiliation. Sub-section 5 of section 33 provides that on receipt of the communication of decision that the college will supply a need in the locality the college shall be required to fulfil the conditions laid down in that sub-section. Section 33 (5)(h) (i) (1) and (2) and 33(5)(j) read as under:

33 (5). On receipt of the communication of decision that the College will supply a need in the locality the college shall be required to fulfil the following conditions, namely :

xxx xxx xxx xxx xxx xxx

(h). that the college rules fixing the fees (if any) to be paid by the students have not been so framed as to involve such competition with any existing college in

the same neighbourhood as would be injurious to the interests of education;

(i). that for recruitment of the Principal and members of the teaching staff of the college (other than a Government college or a college maintained by Government) there is a selection committee of the college which shall include -

(1). In the case of recruitment of the Principal, a representative of the University nominated by the Vice Chancellor, and

(2). in the case of recruitment of a member of the teaching staff of the college, a representative of the University nominated by the Vice-Chancellor and the Head of the Department, if any, concerned with the subject to be taught by such member.

(j) that the college shall comply with the Statues, Ordinances and Regulations providing for conditions of service including salary scales and allowances of the teaching and other academic and non-academic staff of an affiliated college."

We are not referring to other aspects of requirement of providing for conditions of services including salary scales and allowances of the teaching and other academic and non-academic staff of affiliated colleges. It is clear that affiliated colleges are bound to comply with the conditions of Ordinances and Regulations. Affiliated colleges have to follow the aforesaid procedure for appointment of academic staff.

###. So far as recognition is concerned, section 35 provides for recognition of institute for research and specialized studies.

###. Section 35.A provides for approval of Institutions. In case of approval of institutions, the Executive Council, after consultation with the Academic Council, approves an institution as an approved institution for specialized studies, laboratory work, internship, research or other academic work approved by the Academic Council under the guidance of a qualified teacher.

###. Sub-section (2) of Sec. 35(A) being relevant is quoted hereunder:

35A. Approval of institutions.

(1). The Executive Council shall have the power after consultation with the Academic Council to approve an institution as an approved institution for specialized studies, laboratory work, intership, research or other academic work approved by the Academic Council under the guidance of a qualified teacher.

(2). An institution which desires to have such approval shall send a letter of application to the Registrar and shall give full information in the letter of application in respect of the following matters, namely:

(a). the name qualifications, experience and research work of the teacher under whom approval work is to be done;

(b). the nature of work or the subjects for which work is proposed to be done;

(c). accommodation, equipment, library facilities and the number of students for whom provision has been made or is proposed to be made;

(d). fees levies or proposed to be levied and the financial provision made for capital expenditure or buildings and equipment and for the continued maintenance and efficient working of the institution.

(3). xxx xxx xxx xxx xxx

(4). xxx xxx xxx xxx xxx

Thus, the name of the teacher is to be communicated under whom approval work is to be done. The presence of other teachers in institute is irrelevant as the teacher who is named is expected to guide. If the teacher has resigned or is superannuated or has expired, can other teacher in his place guide the student? Such teacher may not be qualified for guidance either on account of lack of experience in relation to required length of period or may not be expert in the branch in

which, the teacher who was named was rendering guidance for the approved work. Looking to the nature of work or the subject which was to be specified, the work can not be entrusted to any one. In absence of a teacher for guidance for research work, the student will have to find out other teacher and institute. Even in the same institute, another teacher is appointed in place of teacher who was working cannot render any help unless his name is approved by the University.

###. Considering from another angle, in comparison with the provision for affiliated institutes, the approved institute is not required to follow the statues, ordinances and Regulations providing for conditions of service including salary, scales and allowances of the teaching and other academic and non academic staff. The approved institutes are voluntarily rendering assistance.

###. There are no conditions imposed under section 35A with regard to salary, appointment of staff as it is found in case of affiliated colleges.

###. There are separate provisions for withdrawal of affiliation, recognition and approval, which are found in section 37, 38 and 38AA of the Gujarat University Act respectively. Section 38 AA of the Act refers to withdrawal of approval or suspension of approval by the Executive Council. In case an Institute has failed to observe any conditions, or the work assigned to it is conducted in a manner which is prejudicial to the interest of education or the teacher recognized by the University leaves the Institution, approval may be withdrawn or suspended for any period by Executive Council. However, before passing any order, it will be obligatory for the Executive Council to call upon the Institution by issuing notice to show cause within one month from the date of receipt of the notice as to why such an order should not be made. The decision to withdraw the approval or suspend the approval is to be taken after considering the explanation and after consulting the Academic Council. However, when an Institute is otherwise rendering education independently without any support of the University for the course conducted by the Institute, approval of the University is not required. Degrees are conferred by the Institute itself. In the present case, an independent Institute which is approved is not subject to any test or discipline of the University in appointment or removal of the staff. In case of affiliated college/institute in view of the provisions contained in the Gujarat University Act, statute and Ordinance in fixing the fees

payable by the students for their courses and in appointing the staff, University plays major role. Closure of a college, or its Division, discontinuance of a class or Division, or medium is not permissible unless and until the procedure is followed as indicated in the Ordinance. Such is not the case with IIMA. As the Institute had sufficient machinery for research or other work, sought approval so that the students can take advantage of the qualified teachers for their guidance. Approval on the part of such Institution is a voluntary act. Even without approval, Institute is able to impart education because it stands on its own and does not depend upon the University for any purpose whatsoever. It can request the University for withdrawal of the approval of its own. The moment letter is tendered, the disapproval will become effective. If the withdrawal of approval is not voluntary and if the University wants to take steps for withdrawal of approval, then section 38AA will come into picture.

###. In view of the aforesaid position, Mr. Nanavati, learned counsel for the appellant submitted that the Institute is neither 'affiliated' nor 'recognized', but it was merely an 'approved' institute. Mr. Nanavati submitted that IIMA was an approved Institute for purpose of guidance to the students heading for Ph. D Degree of the University. He submitted that the purpose of approval is only for guidance of the Professor. Mr. Nanavati further submitted that IIMA does not prepare students for Ph.D but conducts only course for awarding diploma of its own. He further submitted that a Ph.D. student may take guidance from the Professor of IIMA. He further submitted that students of IIMA are not sent to University exams as in case of affiliated colleges. He further submitted that if a college wants its students to appear in the examinations conducted by the University, such a college must be affiliated to the University and if there is no affiliation, student cannot appear at the University examination.

###. Mr. Nanavati submitted that IIMA wrote a letter dated 12.11.1992 to the Gujarat University requesting the University to discontinue the Institute as an approved institute. It was followed by another letter dated 31.12.1992 expressing IIMA's inability to continue as approved institute beyond 31.12.1992. He further submitted that by letter dated 27.6.1993 the University has approved the discontinuation of IIMA as an 'approved' Institute with effect from 31.12.1992. He submitted that therefore, the Institute is not an approved Institute and in that case, the provisions of the Gujarat University

Act will not be applicable to the Institute. He further submitted that IIMA wrote the first letter on 12.11.1992 to discontinue its approval. However, there was delay on the part of the University in taking a decision. Mr. Nanavati, therefore, submitted that it cannot be said that the Institute continued as an approved institute till the University took a decision. In the instant case, immediately after 12.11.1992, the University has not taken a decision. He submitted that the services of the respondent No.1 were terminated on 5.1.1993. He further submitted that the approval was discontinued. IIMA was not required to obtain consent of the University. Mr. Nanavati submitted that merely because the University has to take a decision it cannot be said that till that date, the Institute would continue as an approved Institute. In the facts and circumstances which is narrated hereinabove and looking to the purpose for which the Institute was approved, we find much substance in the submission of Mr. Nanavati and the same is required to be accepted.

###. Learned counsel Mr. Nanavati appearing for the appellant submitted that reading page 14 of the impugned judgment, it appears that the learned Single Judge has proceeded on the assumption that the respondent institute was a recognized Institute under sec. 35 of the Gujarat University Act. In paragraph 14, the learned Single Judge observed as under:

> "It is an admitted fact that the respondent institute was a recognized institute under sec. 35 of the G.U. Act ... "

###. It is required to be noted that the Institute is not a 'recognized' institute but is merely an 'approved' institute. Section 35 of the Act refers to 'recognition of institutions of research and specialized studies', whereas section 35A refers to 'approval of institutions'.

###. Learned single Judge has also referred to the decision of the Division Bench of this Court in Spl. C.A. No. 133/76 at page 16 of the judgment (ANADI MUKTA' case), decided by the Division Bench of this High Court. Learned Single Judge has considered paragraphs 65, 66 and 70 of the said judgment and has reproduced in the judgment. Reading that part of the judgment it appears that the Division Bench deciding Spl. C.A. No. 133/76 (ANADI MUKTA's) case was examining a question where the college was an 'affiliated' college. Learned Single Judge seems to have accepted the contention raised by the Advocate for the respondent No.1. It was argued

before the learned Single Judge that the Institute was recognized institute under section 35 of the Gujarat University Act. It is required to be noted that documents placed on record specifically points out that IIMA was merely an 'approved' institute and not a 'recognized' institute under section 35 of the Act. The Institute ceases to be an approved Institute with effect from 31.12.1992. Not only that, but before this Court, it is also not disputed that it was an 'approved institute'. Learned Single has reproduced section 35.A of the Act. Learned counsel for the appellant pointed out to us that this section specifically refers to 'approval of Institutions' but after quoting this section, learned Single Judge went on to say that :

> "it is an admitted fact that the respondent institute was a 'recognized' institute".

He further submitted that at page 15, the learned Single Judge further observed that :

> "it reveals from the record that the respondent institute was recongised institute under sec. 35 of the Act but the respondent institute surrendered the recognition to the University on 31.12.1992 i.e. before the issuance of impugned termination order dated 5.1.1993".

Mr. Nanavati, learned counsel for the appellant submitted that the learned Single Judge committed an error in considering the institute as a 'recognized' institute whereas infact it was only an 'approved' institute. We find much force in this submission of Mr. Nanavati.

###. Mr. Nanavati further submitted that in the circumstances, the learned Single Judge also erred in applying the ratio of the decision in Spl. C.A. No. 133/76 (ANADI MUKTA) the Division Bench pointed out as under in paragraphs 69 and 70 :

> "The idea of an association with the members retaining right to close down their institution in the matter of imparting of education is ruled by the scheme of the Act. It was also urged that an affiliated college cannot be compelled to impart education if it wants to close down. This argument can be answered by saying that closure is not totally prohibited. Under Ordinance 120E closure can be permitted.

70. In view of our conclusion on question no.4, the answer to question no.5 whether the affiliated college continues to be statutory body or to have statutory obligations laid down in after the defacts closure, is quite clear. For the purpose of enforcing body whose affiliation has not been brought to an end legally to hold otherwise would put in serious jeopardy the rights in favour of teachers another employees corresponding to the statutory obligations."

In our view, there is no closure of the Institute as was the case before the Division Bench in Spl. C.A. No. 133/76. Learned Single Judge has erred in applying the decision of the Division Bench which is altogether on different facts and principle. That was a case relating to a college which was affiliated. There was no prayer of writ of mandamus to reinstate the applicants but prayer was for terminal benefits.

###. With regard to the provisions for closure of the affiliated college, the provisions are found in Ordinance 120.E. Reading Ordinance 120-E it is clear that it is applicable in case of intended closure of a college or discontinuance of teaching of all the subjects comprised in any of the Faculties of a College or discontinuance of any of the classes or division thereof in any medium or media. It shall be incumbent for the management of the college to follow the procedure laid down in the Ordinance. Reading ordinance 120.E it is clear that executive council is required to consider educational need of the locality, interest of the student community, policy of the University in regard to giving encouragement to educational facilities in various faculties or media, development of the faculty and interests of the members of the staff concerned, bonafide difficulties which the management is facing by the continuance of the college or classes and any other relevant matter. The Ordinance further states that no management of an affiliated college shall effect the closure of a college, discontinuance of teaching of all the subjects comprised in any of the faculties of a college or discontinuance of any of the classes or division thereof in any medium or media after the approval as envisaged above until and unless it has to the satisfaction of the University paid to the members of its staff which is retrenched, the compensation, provident fund dues and other lawful dues either under the University Act or Statutes, Ordinances, Rules or Resolutions made thereunder. Before the Division Bench of this Court in Spl. C.A. No.133/76 (ANADI MUKTA),

there was closure of the Institute in violation of this ordinance and we have referred to the facts of that case in the earlier part of this judgment. The ratio of the judgment in Spl. C.A. No. 133/76, therefore, cannot be made applicable in the instant case as in that case there was closure of the affiliated Institute in violation of all the provisions while in this case, no such or similar provision is made applicable, and is not a case of closure of the institute but mere termination simpliciter of a person for which alternative remedy is available. What is sought to be safeguarded in case of a closure of a class or division and payment to the staff member who is retrenched.

###. In view of what is stated hereinabove, it is clear that section 51.A would not be applicable as on the date on which the action was taken the Institute surrendered its approval and it was granted by the University. However, in case of dispute between the approved institute and its staff member, the matter was required to be referred to the Tribunal as contemplated under section 52.A. The matter can be referred either on the request of the governing body or of the member concerned. It is not necessary that it must be referred at the request of the governing body. If the member of the staff is aggrieved, the legislature has also kept it open for the member concerned to approach the Tribunal/arbitration consisting of one member nominated by the governing body of the college or as the case may, the recognized or approved institute, one member nominated by the member concerned and an umpire appointed by the Vice Chancellor. In the field of education, the legislature in its wisdom thought it just and proper to have a separate Tribunal for deciding the dispute which may arise between the academic staff and institute by a Tribunal of persons to be selected in the manner laid down in the Act. When an alternative forum is provided, it would not be proper for the High Court to interfere. We have earlier referred to decision of the Apex Court in this behalf and hence we do not find it necessary to refer to the same at this juncture. If the respondent No.1 says that section 51.A was applicable, then on the same argument, section 52.A would be applicable and for whatever reason if the order was bad, it was open for him to approach the Tribunal of arbitration. The Division Bench in the case of K.S. JOY (supra) in paragraph 8 observed that:

"Even if it is assumed that the provisions of sec. 52A of the G.U. Act are attracted, and the dispute could be referred to a Tribunal of

arbitration as provided therein, then also, once the petition is entertained by the High Court and is heard on merits, it would not be proper for the High Court to relegate the party to an alternative remedy".

Thus, the Division Bench, did not decide the the issue. Possibly, according to the Division Bench, it was a case where neither inquiry was held against the petitioner of that case nor the petitioner was given any opportunity of showing cause against the proposed order of termination of service. No approval of the Vice-Chancellor or any officer of the Gujarat University authorised by the Vice-Chancellor in that behalf was obtained before or after passing the order of termination from service. The petitioner K.S. JOY was Secretary of the Union and was working as an Office Assistant. The Division Bench in that case has not decided the issue of applicability of section 52.A of the Act. In view of the decision of the Division Bench in the case of G.H.C. LTD. vs. A.C. OF CUSTOMS reported in 1990 (1) GLR 346, it would not be proper for this Court to entertain this petition. Almost on similar circumstances, the Division Bench of this Court (G.S.F.C. -supra) has allowed the L.P.A. In view of the judgment of the Apex Court which we have referred to hereinabove, it cannot be said that this Bench should not interfere as the matter has been entertained and disposed of by the learned Single Judge. The provision of Letters Patent Appeal is meant for correcting the errors.

###. Learned counsel Mr. Nanavati appearing for the appellant submitted that the conduct of the respondent No.1 is also relevant in this matter. The person who seeks shelter of the Court must come to the Court with clean hands. Two letters which were produced by him before the Court were not genuine letters, but were forged letters. The letters were not prepared on the date on which they were prepared, but have been subsequently got up with the aid and assistance of the publisher. We have already referred to this aspect earlier.

The respondent No.1 , in his affidavit dated 30/3/1993 in paragraph 8 has averred that the Institute has no right to inquire into the allegation of plagiarism. He has produced before the Committee documentary evidence to show that two other professors had also contributed in writing of the said book, who were not in employment of the Institute.

We have considered the report made by the Inquiry Committee and we have perused the report dated 28th September 1992. The Committee has observed that use of someone else's material for class room purpose, teaching and examination is very different from publishing such material in one's own name without due acknowledgment and then having that material copyrighted. There is nothing to indicate that the Committee was informed about the division of Chapters at the earliest point of time. Personal hearing was given on 11.8.1992. Report was supplied to the respondent No.1 on 17.8.1992. From the record it is clear that the committee met the respondent No.1 on 11.8.1992 for any additional inputs or information pertaining to the matter so that the committee can consider it. The Committee considered the arguments of the respondent No.1 conveyed through his letter dated 6th July 1992 addressed to the Director pertaining to the matter. The Committee also considered the letter submitted by the respondent No.1 and till 17th August 1992, the date on which the Committee submitted its report, we find no reference to the alleged letters received from the Publisher. Thus it appears that after going through the report, the respondent No.1 came out with the case for the first time and tried to render an explanation that the articles were written by co-authors. It is difficult to accept the belated defence in view of what we have stated hereinabove.

###. In the case before us, there is sufficient material on record and on the basis of the material on record, we have come to the conclusion that there is nothing to show that over all effective control rest with the government. To arrive at a conclusion, we have considered number of decisions of the Apex Court, the decisions delivered by the Division Benches of this Court and the material placed on record. We are of the view that IIMA cannot be said to be a State within the meaning of Article 12 of the Constitution.

###. Learned Single Judge held that the Institute performs public functions in the field of management education and research. In reality, according to learned Single Judge, IIMA is performing in the field of management education, training and research and is also involved in like such activities. The Institute, therefore, according to learned Single Judge is a State within the meaning of Article 12 of the Constitution. It is required to be stated that for the purpose of arriving at a conclusion that the Institute is a State or not, various tests are laid down. We have considered the tests laid down by the Apex Court in the case of AJAY

HASIA (supra) and we are not in agreement with the views expressed by the learned Single Judge that because the Institute is in the field of management education and research, it could be a State within meaning of Article 12 of the Constitution of India. One should not lose sight of the fact that in the modern concept of welfare State, independent institution, corporation and agency are generally subject to the State control. The State control does not render such bodies as State under Article 12. In the case of UNNIKRISHNAN (supra), the Apex Court has pointed out, after considering the various decisions rendered earlier in paragraph 76 that it is impossible to hold that a private educational Institute either by recognition or by affiliation to the University could ever be called a instrumentality of the State. We have considered the case of CHANDER MOHAN (supra) wherein the functions of the NCERT were examined and the Apex Court pointed out that it cannot be said to be a 'State'. A Division Bench of this Court, in the case of GSFC LTD (supra) and another Division Bench in the case of DR. C.A. SHAH (supra) considered earlier decisions and applying the tests laid down in the case of AJAY HASIA, in DR. C.A. SHAH's case, the Court pointed out that the decision of AJAY HASIA nowhere lays down that school run by a public trust is State or 'other authority' or 'instrumentality of State' as envisaged under Article 12 of the Constitution.

###. In view of the evidence placed on record and the various decision, in our opinion, it is not correct to say that IIMA is performing public function in the field of management education, training and research and is also involved in like such activities, and, therefore, it is a State within the meaning of Article 12 of the Constitution of India. However, we would like to clarify here that if IIMA acts in breach of Article 14 of the Constitution of India in connection with admission of students in the Institute etc., the Court may invoke its jurisdiction under Article 226 and grant relief to the students, not because it is a State under Article 12, but because granting admission to students involve public duty and calls for fairplay and violation thereof would tantamount to breach of Article 14 of Constitution of India. In the case of UNNIKRISHNAN (supra), the Apex Court pointed out this distinction in paragraph 77 and has held that what is discharged by an educational institution is a public duty, that requires to act fairly and in such a case, it will be subject to Article 14. In our opinion, therefore, the decision in the case of KMA MEMON does not lay down a correct law.

###. In view of the facts and circumstances of the case, the appeal is required to be allowed, and is hereby allowed. The judgment and order passed by the learned Single Judge on 29th September 1993 in Special Civil Application No. 77 of 1993 is hereby quashed and set aside. No order as to costs.

###. Civil Applications No. 2450 of 1993 and 644 of 1994 accordingly stand disposed of.

###. In contempt petition No. MCA 2110/00, a Division Bench of this Court passed an order on 15.11.2000 to the effect that further action on the contempt notice issued on 25.7.1994 be considered only after a decision in this LPA is rendered. As this LPA is now disposed of, we direct the Registry to list MCA No. 2110/00 before the Court.

(B.C. PATEL, J.)

(R.R. TRIPATHI, J.)

csm./ ----------